



Final Regulation Agency Background Document

Agency name	Virginia Department of Education
Virginia Administrative Code (VAC) citation	8 VAC 20-81
Regulation title	Regulations Governing Special Education Programs for Children with Disabilities in Virginia
Action title	Revisions to comply with the "Individuals with Disabilities Education Improvement Act of 2004" and its federal implementing regulations
Date this document prepared	September 4, 2008

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

The present action proposes substantive changes in the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*. In a concurrent action, the Board of Education proposes to repeal the text of the current regulations (8 VAC 20-80) and promulgate new regulations (8 VAC 20-81). There are a number of substantive changes in the regulations, including the following areas: 1) Functions of the Virginia Department of Education (VDOE); 2) Responsibilities of local school divisions and state-operated programs; 3) Qualifications for Educational Interpreters; 4) Child find; 5) Eligibility determinations; 6) The development, review and revision of a student's individualized education program (IEP); 7) Parentally-placed private school students; 8) Discipline; 9) Procedural safeguards, including the appointment of surrogate parents and dispute resolution 10) Local educational agency administration and governance; 11) Funding; and 12) The requirements regarding highly qualified personnel.

In response to public comments received, several provisions that were proposed to be significantly revised, or deleted, have been retained, including regarding parental consent for the termination of special education and related services, and the current administration of the due process system.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

During its meeting on September 25, 2008, the Board of Education adopted the proposed revisions to the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* (8 VAC 20-81-10 et seq.), and directed the Department of Education to proceed with the requirements of the Administrative Process Act.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The *Code of Virginia*, at § 22.1-214, requires the Board of Education to “prepare and supervise the implementation by each school division of a program of special education designed to educate and train children with disabilities” between the ages of two and twenty-one, inclusive. The program developed by the Board of Education must “be designed to ensure that all children with disabilities have available to them a free and appropriate education.” The *Code of Virginia*, at § 22.1-16, authorizes the Board of Education to “promulgate such regulations as may be necessary to carry out its powers and duties....”

When implementing a program of special education services, Virginia must comply with the federal requirements outlined in the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004), and its federal implementing regulations, at 34 C.F.R. Part 300, to continue to be eligible for federal special education funding. In 2008-2009, Virginia expects to receive \$276.6 million in federal special education funding.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The revision of these regulations is essential to protect the health, safety, and welfare of students with disabilities in Virginia. By ensuring that Virginia’s state special education regulations are aligned with federal requirements, VDOE will ensure that students with disabilities in the Commonwealth have available a free appropriate public education and are afforded the procedural safeguards guaranteed by federal law.

The revision process will also strive to ensure consistency by incorporating requirements of the *Code of Virginia* and other regulations that apply to the provision of special education in Virginia, and strive to clarify areas of ambiguity from the previous set of regulations.

Finally, the revision of the state special education regulations is required to ensure compliance with the IDEA 2004, and with its federal implementing regulations, at 34 C.F.R. Part 300, effective October 13, 2006. Alignment with these federal mandates will ensure that students with disabilities in Virginia may continue to benefit from federal special education funding, which will total approximately \$276.6 million in 2008-2009.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

To clarify existing areas of ambiguity and to ensure compliance with the federal requirements outlined in IDEA 2004, and its federal implementing regulations, the current regulations (8 VAC 20-80) are being repealed and concurrently replaced with new regulations (8 VAC 20-81). There are a number of substantive changes in the regulations, including the following areas: 1) Functions of the Virginia Department of Education (VDOE); 2) Responsibilities of local school divisions and state-operated programs; 3) Qualifications for Educational Interpreters; 4) Child find; 5) Eligibility determinations; 6) The development, review and revision of a student's individualized education program (IEP); 7) Parentally-placed private school students; 8) Discipline; 9) Procedural safeguards, including the appointment of surrogate parents and dispute resolution 10) Local educational agency administration and governance; 11) Funding; and 12) The requirements regarding highly qualified personnel.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 - 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
 - 3) other pertinent matters of interest to the regulated community, government officials, and the public.*
- If there are no disadvantages to the public or the Commonwealth, please indicate.*

The proposed revisions to the state regulations governing special education are advantageous to the public, the agency and the Commonwealth in that the proposed revisions ensure compliance with changes in federal and state laws and regulations, which impact the provision of special education and related services in Virginia. Compliance with new federal mandates, as outlined in IDEA 2004 and its federal implementing regulations, will ensure Virginia's continued eligibility for federal special education funding. In 2008-2009, federal funding will provide approximately \$244.8 million in direct funding to local school divisions to support special education programs, and provide an additional \$31.8 million to support training and technical assistance efforts to local school divisions, and funding for compliance and monitoring activities. In addition, the proposed revisions will ensure that students with disabilities have available a free appropriate public education (FAPE) and are afforded the procedural protections guaranteed by federal law. Finally, the proposed changes incorporate recommendations to improve the state regulations governing special education, clarifying previous areas of ambiguity.

There are no identifiable disadvantages to the general public, the agency, or the Commonwealth for revising these regulations.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

* Denotes a substantive change.

Section number	Requirement at proposed stage	What has changed	Rationale for change
8 VAC 20-81 et seq.	* References regarding the Virginia School for the Deaf, Blind, and Multi-Disabled at Hampton (VSDB-H).	Deleted all references to VSDB-H, and made necessary grammatical changes, resulting from the deletions.	The Board of Education officially closed VSDB-H on July 1, 2008.
	The term "mental retardation"	All references to "mental retardation" have been changed to "intellectual disability." This includes reordering certain provisions to appear alphabetically under "intellectual disability" rather than "mental retardation," such as in 8 VAC 20-81-10, and 8 VAC 20-80-80.	This revision was made in response to actions taken during the 2008 Session of the Virginia General Assembly, and significant public comment.
	The term "emotional disturbance"	All references to "emotional disturbance" have been changed to "emotional disability."	The revision was made in response to significant public comment.
	The term "LEA"	All references to "LEA" were changed to "local educational agency."	The revision was made for consistency.
	Citations, cross-references, and typographical errors	Throughout the document, as appropriate, citations and cross-references were corrected or added, and typographical errors were addressed.	The revisions were made to ensure clarity, correct typographical errors, and to comply with guidance from US DOE.
Foreword	4 th paragraph	Deleted "These references are found in the right margin."	Stylistic change.
	6 th paragraph	Corrected included telephone number.	Correct typographical error.
Preamble	Preamble	A new paragraph was added to the end of the preamble, expanding then language regarding the purpose of these regulations.	A public comment noted the need for additional language to provide an overview of the regulations and to clarify their purposes.

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8 VAC 20-81-10	* Definition of "Alternate assessment"	Added language: "means the state assessment program, <u>and any school division-wide assessment to the extent that the school division has one</u> , for measuring student performance against alternate achievement standards...."	The US DOE, during its review, noted that children with significant intellectual impairments must have available an alternative for measuring student performance against alternate achievement standards for not only the state assessment programs, but also, to the extent applicable, division-wide assessments.
	* Definition of "Autism"	"A child who manifests the characteristics of autism after age three could be diagnosed <u>identified</u> as having autism if the criteria in this definition are satisfied."	To comply with the federal regulatory requirement.
	* Definition of "Change in placement"	Inserted : "A 'change in placement' <u>also means any change in the educational setting for a child with a disability that does not replicate the elements of the educational program of the child's previous setting.</u> "	In response to public comments, the change was added for clarity.
	* Definition of "Child with a disability"	Inserted: " <u>This also includes developmental delay if the LEA recognizes this category as a disability in accordance with 8 VAC 20-81-80 N.3.</u> "	In response to public comments, the change was added to clarify that a child who is identified as developmentally delayed is a child with a disability if the LEA permits "Developmental Delay" to be an eligibility category.
	* Definition of "Cognitive disability"	Deleted the term and the definition.	Given the change from "mental retardation" to "intellectual disability," this term, and its cross-reference to "mental retardation" is no longer necessary.
	* Definition of "Comprehensive Services Act" (CSA)	Revised definition to state that the CSA "establishes the collaborative administration and funding system that addresses and funds for services for certain at-risk youths	Revised to comply with the language and intent of the CSA.

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		and their families.”	
	* Definition of “Dangerous weapon”	Revised the language: “does not include a pocket knife with a blade of less than 2½ <u>3</u> inches in length.”	The revision is to comply with the <i>Code of Virginia</i> , which is more stringent than the standard of 2 ½ inches, which is included in federal law.
	* Definition of “Developmental Delay”	Revised the age of eligibility: “Developmental delay” means a disability affecting a child ages two by September 30 through [five <u>six</u> ,] inclusive:....”	The revision was made in response to public comments.
	Definition of “Free appropriate public education” (FAPE)	Inserted language: FAPE means special education and related services that “Include <u>an appropriate</u> preschool, elementary school, middle school or secondary school education in Virginia”.	The revision was made to comply with federal regulatory language.
	Definition of “ Functional behavioral assessment” (FBA)	Inserted language that a FBA “ be <u>include</u> a review of existing data or new testing data or evaluation <u>as determined by the IEP team.</u> ”	In response to public comments, the change was added for clarify that an FBA could include the completion of a new evaluation.
	* Definition of “Impartial special education hearing officer”	Inserted a definition of the term, which “means a person, selected <u>from a list maintained by the Office of the Executive Secretary of the Supreme Court of Virginia to conduct a due process hearing.</u> ”	Included the term to distinguish the special education hearing officer from others included on the general list of hearing officers maintained by the Supreme Court of Virginia.
	* Definition of “Implementation plan”	Reinserted the term with a revised definition, noting the term “ <u>means the plan developed by the local education agency designed to operationalize the decision of the hearing officer in cases that are fully adjudicated.</u> ”	In response to public comment, the role of implementation plans was reinserted to ensure that LEAs comply with hearing officers’ decisions. However, to address concerns regarding duplicative processes, an implementation plan is now only required for fully adjudicated decisions, rather than for

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			decisions of the hearing officer that simply dismisses a case or identify an agreement between the parties.
	* Definition of "Interpreting services"	Revised the definition to note that it includes "cued <u>speech/language transliteration services</u> " and to indicate that "interpreting services" includes interpreting services for children who are deaf-blind. Also inserted: " <u>A child who is not deaf or hard of hearing, but who has expressive or receptive language needs may receive sign language services if directed by the child's IEP.</u> "	In response to public comments, the changes were added for clarity, including which students are eligible to receive interpreting services.
	* N/A	Inserted new definition for "Long-term placement," which states, " <u>'Long-term placement' if used in reference to state-operated programs as outlined in 8VAC 20-81-30 H. means those hospital placements which are not expected to change in status or condition because of the child's medical needs.</u> "	In response to public comments, changes were added to 8 VAC 20-81-30. For clarity, a new definition was also inserted.
	Definition of "National Instructional Materials Accessibility Standard"	Inserted language: " <u>'NIMAS' means the standard established by the United States Secretary of Education to be used in the preparation of electronic files...</u> "	Language to comply with federal regulatory requirements.
	Definitions: "Orthopedic impairment" "Other Health Impairment" "Traumatic Brain Injury"	Reinserted " <u>that adversely affects a child's educational performance</u> " into the definitions for each of these terms.	The language, which appears as part of the federal definition for each of the terms, was included only in 20-81-80 of the proposed regulations as part of the identified eligibility criteria. Reinserted the language into the definition section upon guidance from the US DOE to ensure clarity.
	* Definition of "Parent"	Inserted: "Parent" may also mean " <u>A minor who is emancipated under § 16.1-333 of the Code of Virginia.</u> "	Based on guidance from the Office of the Attorney General, and to ensure clarity regarding the

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		Inserted: <u>"A validly married minor who has not pursued emancipation under § 16.1-333 of the Code of Virginia may assert implied emancipation based on the minor's marriage record, and thus, assume responsibilities of 'parent' under this chapter."</u>	issue, if a child with a disability is emancipated in accordance with state law, or if the minor child with a disability is married, they should be permitted all rights and protections under IDEA, which are typically afforded to the parent of a child with a disability.
	* Definition of "Psychological services"	Inserted language to clarify that "psychological services" includes "consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, <u>direct observation</u> , and behavioral evaluations".	Language added to comply with the federal definition of the term.
	* Definition of "Related services"	Inserted language to clarify that "related services" includes <u>"early identification and assessment of disabilities in children"</u> .	Language added to comply with the federal definition of the term.
	* Definition of "Social work services in Schools"	Inserted: <u>"A local educational agency, in its discretion, may expand the role of a school social worker or visiting teacher beyond those services identified in this definition, as long as the expansion is consistent with other state laws and regulations, including licensure."</u>	The definition in the proposed regulations mirrors the federal definition. In response to public comment, inserted language to clarify that in Virginia, school social workers may have a broader role.
	Definition of "Special education hearing officer"	The term has the same meaning as the term <u>"impartial hearing officer"</u> as that term is used in IDEA and its federal implementing regulations.	Added the word "impartial" to align with federal terminology.
	* Definition of "Specific Learning Disability"	Reinserted the term "emotional disabilities": "Specific learning disability does not include learning problems that are primarily the result of ...of intellectual disabilities; <u>of emotional disabilities</u> ; of environmental, cultural, or economic disadvantage.	The term was inadvertently deleted from the definition of "Specific Learning Disability" in the proposed regulations.

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8 VAC 20-81-20	* Subsection 1. e. stated, "Are in special education and related services...."	"Are in-receiving special education and related services...."	As noted in public comments, special education and related services are services and not a location.
	Subsection 5 stated, "Ensure that each local educational agency takes steps for its children with disabilities to have available to them the variety of educational programs and services available to nondisabled children in the local educational agency...."	Inserted language: "5. Ensure that each local educational agency takes steps for its children with disabilities to have available to them the variety of educational programs and services available to nondisabled children in <u>the areas served by</u> the local educational agency...."	Language inserted to comply with the federal regulatory requirements.
	* Subsection 7 stated, "Prepare and submit for public hearing; receive comment from the public, members of the state special education advisory committee and private special education schools; and place on file with the U.S. Department of Education, final policies and procedures to ensure that the conditions of state eligibility for funding under the Act are met."	Replaced subsection 7 with new language: " <u>Prior to the adoption of any policies and procedures to comply with the Act, or submitting a state plan in accordance with the Act, VDOE shall ensure that public hearings are convened, adequate notice of the hearings are provided, and an opportunity for comment is made available to the public, members of the state special education advisory committee, and private special education schools.</u> "	Language revised to comply with federal regulatory requirements.
	* Subsection 11 outlines VDOE's responsibilities to ensure LEAs comply with state and federal laws and regulations regarding special education.	Revised 11 a to state, "a. Administer a special education due process hearing system that provides procedures for training of special education hearing officers, processing requests for a hearing, appointment of evaluating special education hearing officers, and management and monitoring of hearings, and administration of the hearing system. "	In response to public comments, the Supreme Court of Virginia will continue to administer the due process hearing system.
	* Subsection 23 outlines VDOE's responsibilities relative to collecting Child Count data.	Revised language: "Report and certify annually to the United States Department of Education the number of children with disabilities...on any <u>a</u> date between October 1 and December 1 of each year determined by the "	Based upon guidance from US DOE, revised the language to require that Child Count data be collected on a specific date each year. The Superintendent of Public

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		<u>Superintendent of Public Instruction or designee.</u> "	Instruction or designee will determine the date, but it will be between October 1 and December 1 each year.
	* Subsections 24 and 25 outline VDOE's responsibilities regarding overidentification and disproportionality.	<p>Language was inserted into 24 a and 25:</p> <p>"24. Ensure that a practical method is developed and implemented... with respect to:</p> <p style="padding-left: 40px;">a. The identification of children as children with disabilities, including the identification of <u>children as children with disabilities in accordance with a particular impairment described in 8VAC20-81-10, "Child with a disability"; ...</u></p> <p>25. Ensure that in the <u>case of the determination of significant disproportionality, as outlined in subdivision 24 of this section</u>, the Virginia Department of Education shall:</p> <p style="padding-left: 40px;">a. Reviews <u>review</u> and, if appropriate, revises <u>provide for the revision of</u> the policies, procedures, and practices used by the local educational agency....</p> <p style="padding-left: 40px;">b. Requires <u>require</u>...</p> <p style="padding-left: 40px;">c. Requires <u>require</u>...</p>	Based on guidance from US DOE, the language was modified to more closely align with federal regulatory requirements.
	Subsection 28 outlines VDOE's responsibilities regarding if it provides direct services to children with disabilities.	Revised 28 a: "The Virginia Department of Education shall <u>may</u> use payments that would otherwise have been available to a local educational agency <u>under Part B of the Act</u> to provide special education services directly to children with disabilities residing in the local school division or served by a state-operated program in accordance with the conditions of § 1413 (h) of the Act <u>the excess cost requirements as outlined in 8 VAC 20-81-260.</u>	This revision is made to align with federal regulatory requirements. Inadvertently, the correction was not included in the proposed regulations.
8 VAC 20-81-30	* N/A	Revised B 2: "Children with disabilities who are homeless, <u>in</u>	Based on public comment, additional

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		<u>accordance with the provisions of the McKinney-Vento Homeless Assistance Act (42 USC §11431 et seq.);</u>	language was inserted to clarify that LEAs must also comply with the requirements of the McKinney-Vento Homeless Assistance Act when working with students with disabilities who are homeless.
	* N/A	Inserted a new provision in subsection C: "Every child with a disability is deemed to reside in a school division when:... <u>7. The child is living in the school division not solely for school purposes, as a validly married minor who has not pursued emancipation under §16.1-333 of the Code of Virginia but who asserts implied emancipation based on the minor's marriage record.</u>	Based on guidance from the Office of the Attorney General, language was inserted to clarify which LEA is responsible for the provision of FAPE to a child with a disability who has been emancipated in accordance with the <i>Code of Virginia</i> .
	* In subdivisions E 3 through E 8, the proposed regulations outlined which LEA was responsible for the provision of FAPE to a child with a disability based on the child's residency. Each provision included an exception that if the child was placed in a state-operated program (SOP), the SOP was responsible for the provision of FAPE rather than the LEA of residence.	In subdivisions E 3 through E 8, deleted the phrases: "unless the child is in a state-operated program"; "unless the adult child with a disability is in a state-operated program"; and "unless the adult child is in a state operated program".	In response to public comments, the revisions were made to ensure that for children with disabilities who are placed long-term in a SOP for noneducational reasons, the child's LEA of residence continues to be responsible for the provision of FAPE in the least restrictive environment.
	* Subdivision E 7: "7. If the child is aged 18 or older, who has not been declared legally incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has not appointed a guardian to make decisions, the adult child is a resident of the division where the guardian resides, unless the adult child is in a state-operated program. The	Revised subdivision E 7: "7. If the child is aged 18 or older, who has not been declared legally incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has not appointed a guardian to make decisions, the adult child is a resident of the division where the guardian resides, unless the adult child is in a state-operated program. The the adult child's residence is the fixed home to which the adult child will return following the child's return	As noted above, in response to public comments, the phrase "unless the adult child is in a state-operated program" was deleted. The additional revision was made to comply with the <i>Code of Virginia</i> and to mirror the current provision.

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	adult child's residence is the fixed home to which the adult child will return following the child's return from a facility and at which the adult child intends to stay. No adult child shall have more than one residence at a time."	from a facility and at which the adult child intends to stay. No adult child shall have more than one residence at a time."	
	* N/A	Inserted a new provision in subsection E: <u>"9. If placed in a sponsored residential home, licensed in accordance with 12VAC 35-105-10 et seq., the child is a resident of the division where the parent(s) reside."</u>	The new provision was added to clarify which LEA is responsible for FAPE given this non-educational placement option is expanding in Virginia.
	* "H. Each state-operated program shall ensure that children with disabilities, aged two to 21, inclusive, in that institution have the right to a free appropriate public education."	Revised the language in subsection H: "Each state-operated program shall ensure that <u>the requirements in this chapter are applied to children with disabilities, aged two to 21, inclusive, in that institution</u> have the right to a free appropriate public education. 1. <u>For children with disabilities who are placed in a state-operated program as a long-term placement, the local educational agency of the parent's residence remains responsible for ensuring that the child receives a free appropriate public education.</u> 2. <u>The state-operated program shall ensure that the local educational agency of the parent's residence is advised of the child's admission, status, and meetings associated with the child receiving a free appropriate public education.</u>	In response to public comments, the revisions were made to ensure that for children with disabilities who are placed long-term in a SOP for noneducational reasons, but who can be served in the LRE in the LEA of residence, the child's LEA of residence continues to be responsible for the provision of FAPE. The revision also outlines the SOPs responsibilities for these students.
8 VAC 20-81-40	* Subdivision A 2 stated, "b. Special education teachers who are the teachers of record for instructing one or more federal core subjects to students with disabilities shall be highly qualified."	Deleted language: "b. Special education teachers who are the teachers of record for instructing one or more federal core subjects to students with disabilities shall be highly qualified."	Based on guidance from US DOE, special education teachers must be highly qualified regardless of whether or not the teacher is providing instruction in one or more of the federal core subjects.

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	* Subsection E outlined the requirements for Educational interpreting services.	<p>The subsection was revised as follows:</p> <p>E. Educational interpreting services.</p> <p>1. The qualification requirements for personnel providing interpreting services <u>for children who are deaf or hard of hearing</u> are as follows:</p> <p>a. Personnel providing educational interpreting services for children using sign language shall:</p> <p><u>(1) have a valid...(VQAS) Level III, or</u></p> <p><u>(2) a passing score on the... (EIPA) Written Test along with a minimum of a Level 3.5 on the EIPA Performance Test or any other state qualification or national certification (National Interpreter Certification excluding Certificate of Deaf Interpretation) recognized by the Virginia Department for the Deaf and Hard of Hearing as equivalent to or exceeding the VQAS Level III. Under no circumstances shall local educational agencies or private special education schools hire interpreters who hold qualifications below a VQAS Level II, EIPA Level 3.0 or the equivalent from another state. Interpreters hired with a VQAS Level II, EIPA Level 3.0 or the equivalent have one year to reach the required qualifications.</u></p> <p>b. Personnel providing educational interpreting services for children using cued speech/language shall have a Virginia Quality Assurance Screening Level III for cued speech/language or hold a <u>national Transliteration Skills Certificate from the...(TEC Unit) or equivalent recognized by the Virginia Department for the Deaf and Hard of Hearing.</u></p> <p>c. Personnel providing</p>	In response to public comment, revisions were made to the qualifications of educational interpreters to provide LEAs and educational interpreters with flexibility, while ensuring that children with disabilities are provided with quality interpreting services.

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		<p>educational interpreting services for children requiring oral interpreting shall meet minimum requirements for competency on the Virginia Quality Assurance Screening's written assessment of the Code of Ethics and hold a national Oral Interpreter Credential (OIC).</p> <p>2. Personnel who provide interpreting services for children who use sign language or cued speech/ language and who do not hold the required qualifications may be employed in accordance with the following criteria:</p> <p>a. Personnel shall have a valid Virginia Quality Assurance Screening Level I, or its equivalent, as determined by the Virginia Department for the Deaf and Hard of Hearing; or</p> <p>b. Personnel shall have a passing score on the EIPA Written Test and a minimum score of 2.5 on the EIPA Performance Test upon hiring date in any local educational agency in Virginia.</p> <p>3. The following qualification requirements for personnel providing interpreting services for students who are deaf or hard of hearing will become effective in 2010:</p> <p>a. Personnel providing educational interpreting services for children using sign language shall hold</p> <p>(1) a valid Virginia Quality Assurance Screening (VQAS) Level III; or</p> <p>(2) a passing score on the Educational Interpreter Performance Assessment (EIPA) Written Test along with a minimum of a Level 3.5 on the EIPA Performance Test or any other state qualification or national certification (excluding Certificate of Deaf Interpretation)</p>	

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		<p><u>recognized by the Virginia Department for the Deaf and Hard of Hearing as equivalent to or exceeding the VQAS Level III.</u></p> <p><u>(3)Under no circumstances shall local educational agencies or private special education schools hire interpreters who hold qualifications below a VQAS Level II, EIPA Level 3.0 or the equivalent from another state.</u></p> <p><u>(4)Interpreters hired with a VQAS Level II, EIPA Level 3.0 or the equivalent shall have two years from the date of hire to reach the required qualifications.</u></p> <p><u>b. Personnel providing educational interpreting services for children using cued speech/language shall have a valid Virginia Quality Assurance Screening Level III for cued speech/language or hold a national Transliteration Skills Certificate from the Testing, Evaluation and Certification Unit (TEC Unit) or equivalent recognized by the Virginia Department for the Deaf and Hard of Hearing.</u></p> <p><u>(1)Under no circumstances shall local educational agencies or private special education schools hire educational interpreters to provide cued speech services who hold qualifications below a VQAS Level I or the equivalent from another state.</u></p> <p><u>(2)Educational Interpreters to provide cued speech hired with a VQAS Level I or the equivalent have three years from the date of hire to reach the required qualifications.</u></p> <p><u>c. Personnel providing educational interpreting services for children requiring oral interpreting shall hold a national Oral Transliteration Certificate (OTC) or equivalent recognized by the Virginia Department of</u></p>	

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		<u>Deaf and Hard of Hearing.</u> <u>4. For a child who is not deaf or hard of hearing but for whom sign language services are specified in the IEP to address expressive or receptive language needs, the sign language services shall be provided by an individual meeting the requirements determined appropriate by the local educational agency.</u>	
8 VAC 20-81-50	<p>* Subdivision A 3 f: “f. The local school division shall consult with appropriate representatives of private school children with disabilities, as well as home-instructed or home-tutored children with disabilities, on how to implement the child find and evaluation activities.”</p>	<p>Revised subdivision A 3 f: “f. The local school division shall consult with appropriate representatives of private school children with disabilities, as well as home-instructed or home-tutored children with disabilities, <u>and representatives of parents of parentally-placed private school children with disabilities</u>, on how to implement the child find and evaluation activities.”</p>	Upon guidance from US DOE, revisions made to comply with federal regulatory requirements.
	<p>* D. Each school division shall have procedures to review records, assess whether the child was provided appropriate instruction, and review other performance evidence of the child referred through a screening process, or by school staff, the parent(s), or other individuals.</p> <p>1. The local school division's procedures shall ensure that if a child received early intervening services and/or other scientific research-based interventions, these services do not needlessly delay a child suspected of having a disability from being evaluated for special education and related services. Such</p>	<p><u>D. Referrals.</u></p> <p>1. Each school shall have procedures to <u>process in a timely manner all referral requests for a child suspected of having a disability.</u></p> <p>2. Each school shall have a team <u>to review records and other performance evidence of the child being referred in order to make recommendations to meet the child's educational and behavioral needs.</u></p> <p><u>a. The team shall include:</u></p> <p><u>(1) The referring source, as appropriate (except if inclusion of a referring source would breach the confidentiality of the child);</u></p> <p><u>(2) The principal or designee;</u></p> <p><u>(3) At least one teacher; and</u></p> <p><u>(4) At least one specialist.</u></p>	<p>In response to public comment, a framework for a school-based structure for referrals was reinserted, including timelines, required team members, and procedures for the referral process. However, the revisions continue to permit LEAs the flexibility to use scientific, response to intervention methods with procedural protections for the child suspected of having a disability intact.</p>

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	<p>procedures shall include:</p> <ul style="list-style-type: none"> a. tracking and reviewing timelines; b. instructions on maintaining data-based documentation reflecting the child's progress during instruction in the child's area(s) of difficulty; and c. written progress reports to the child's parent(s) at reasonable intervals for documenting the progress of the intervention strategies to address the child's learning, behavior, communication, or development. <p>2. If the child has not made adequate progress after an appropriate period of time, during which the conditions of providing appropriate high-quality, research-based instruction in general education settings delivered by qualified personnel and data-based documentation requirements have been implemented, a referral for an evaluation to determine if the child needs special education and related services shall be made to the special education administrator or designee.</p> <p>E. Each school division shall have procedures to process in a timely manner all referral requests for a child suspected of having a disability.</p> <p>1. The local school division's procedures shall ensure that the processing of such referrals do not</p>	<p><u>b. Other members may be included according to the school division's procedures, or when the school division determines that the special needs of the child identified in the referral request requires additional information that should be provided by individuals with specialized training or specific knowledge.</u></p> <p><u>c. One member of the team must be knowledgeable about alternative interventions and about procedures required to access programs and services that are available to assist with children's educational needs.</u></p> <p><u>3. Children may be referred through a screening process, or by school staff, the parent(s), or other individuals.</u></p> <p><u>a. The referral may be in written, electronic, or oral form to the principal or designee of the school the child attends, or if initially enrolling in the school division, in the school in the parent's district.</u></p> <p><u>b. If the referral is made to the special education administrator or designee, the administrator shall within 3 business days:</u></p> <ul style="list-style-type: none"> <u>(1) initiate the evaluation-eligibility process in accordance with 8VAC20-81-60; -70; -80;</u> <u>(2) require that the school-based team review and respond to the request; or</u> <u>(3) deny the request.</u> <p><u>(a) If the request is denied, prior written notice, in accordance with 8VAC20-81-170 shall be given to the parent(s), including the parent's right to appeal the decision through the due process hearing procedures.</u></p> <p><u>4. In reviewing the child's performance, the team may use a</u></p>	

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	<p>needlessly delay a child suspected of having a disability from being evaluated for special education and related services.</p> <p>2. If the school division decides not to evaluate, prior written notice, in accordance with 8 VAC 20-81-170 shall be given to the parent(s), including the parent's right to appeal the decision through the due process hearing procedures.</p>	<p><u>process based on the child's response to scientific, research-based interventions or other alternative research-based procedures.</u></p> <p><u>a. The team shall ensure that these interventions are documented and do not needlessly delay a child suspected of having a disability from being evaluated for special education and related services.</u></p> <p><u>b. If the child has not made adequate progress after an appropriate period of time during the implementation of the interventions, the team shall refer the child to the special education administrator or designee for an evaluation to determine if the child needs special education and related services.</u></p> <p><u>5. Timelines for Referral Process</u></p> <p><u>a. The team shall meet within 10 business days following the receipt of the referral.</u></p> <p><u>b. The team shall refer the child to the special education administrator or designee within 3 business days if the team determines that the child should be referred for an evaluation for special education and related services.</u></p> <p><u>c. If the team decides not to refer for an evaluation for special education and related services, prior written notice, in accordance with 8VAC20-81-170 shall be given to the parent(s), including the parent's right to appeal the decision through the due process hearing.</u></p> <p><u>6. Actions by the team shall be documented in writing and shall include information upon which a decision was based.</u></p>	
8 VAC 20-81-60	<p>* Subsection A:</p> <p>1. Referrals may be made by any source including</p>	<p>Revised subsection A:</p> <p>1. Referrals may be made by any source including school staff, a</p>	<p>In response to public comment, a framework for a school-based</p>

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	<p>school staff, a parent(s), the Virginia Department of Education, any other state agency, or other individuals.</p> <p>Subsection B: 1. Upon receipt of the referral for initial evaluation for the provision of special education and related services to a child with a disability, regardless of the source, the special education administrator, or designee, shall:</p>	<p>parent(s), the Virginia Department of Education, any other state agency, or other individuals, <u>or a school-based team in accordance with 8VAC20-81-50 5.b. ...</u></p> <p>Insert new subdivision A 3: <u>3. Upon receipt of the referral for initial evaluation for the provision of special education and related services to a child suspected o having a disability, from a source other than the school-based team, the special education administrator, or designee, shall:</u> <u>a. initiate the initial evaluation procedures under subsection B;</u> <u>b. refer the child to the school based team to review and respond to the request under 8VAC20-81-50 D.3.b.;or</u> <u>c. deny the request, and provide prior written notice in accordance with 8VAC20-81-170.</u></p> <p>Subsection B: 1. Upon receipt of the referral for initial evaluation for the provision of special education and related services to a child with a disability, regardless of the source, the <u>The</u> special education administrator, or designee, shall:</p>	<p>structure for referrals was reinserted into 8 VAC 20-81-50. Language was changed in this section as a result of changes to 8 VAC 20-81-50.</p>
	<p>* Subdivision B 1 g: “Ensure that all evaluations are completed and that decisions about eligibility are made within 65 business days after the parent has provided written consent to the evaluation process.”</p>	<p>Revised Subdivision B 1 g: “Ensure that all evaluations are completed and that decisions about eligibility are made within 65 business days after the parent has provided written consent to the <u>evaluation process</u> of the receipt of the referral by the special education administrator or designee, including if the special education administrator or designee routes the referral to the school-based committee for review and action.”</p>	<p>In response to significant public comment, the trigger for the timeline for an initial evaluation was revised from the date of consent, to the date of the receipt of the referral by the special education administrator or designee. In addition, for clarity, a timeline was inserted for the routing of a referral to the school-based team, outlined in 8 VAC 20-81-50.</p>
8 VAC 20-81-70	The term “test”.	The term “test” was replaced with the term “assessment” throughout	Revised to comply with federal regulatory

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		the section.	language.
	* N/A	Inserted new provision B 1 b (4): “b. On the basis of that review and input from the child's parent(s), identify what additional data, if any, are needed to determine: <u>...(4) Whether the child needs or continues to need special education and related services;....”</u>	Revised to comply with federal regulatory language.
	Subdivision F 5: “5. Requirements if additional data are not needed: a. If the team determines that no additional data are needed to determine whether the child continues to be a child with a disability, the local educational agency shall provide the child's parent(s) with written prior notice, including information regarding: (1) the determination and the reasons for it; and (2) the right of the parent(s) to request an evaluation to determine whether the child continues to be a child with a disability and to determine the child's educational needs. b. The local educational agency is not required to conduct the evaluation to gather additional information to determine whether the child continues to have a disability and to determine the child's educational needs, unless the child's parent(s) requests the evaluation for these specific purposes. c. The child's parent(s) has the right to resolve the issue through the dispute resolution options	Deleted language as subdivision F 5, and inserted the same language as a new subdivision B 4.	The federal regulatory requirements apply to both initial evaluations and reevaluations. Therefore, they were consolidated together in subsection B.

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	of mediation or due process, as described in this chapter.		
	<p>* Subsection C:</p> <p>1. Tests and other evaluation materials used to assess a child under this chapter are selected and administered so as not to be discriminatory on a racial or cultural basis;</p> <p>2. Each assessment and other evaluation materials shall be provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so.</p> <p>...</p> <p>6. Any standardized tests that are given to a child:</p> <p>a. Have been validated for the specific purpose for which they are used; and</p> <p>b. Are administered by knowledgeable and trained personnel in accordance with the instructions provided by the producer of the tests.</p>	<p>Revised subsection C:</p> <p>1. Tests <u>Assessments</u> and other evaluation materials used to assess a child under this chapter are:</p> <p>a. selected and administered so as not to be discriminatory on a racial or cultural basis;</p> <p>b. Each assessment and other evaluation materials shall be provided and administered in the <u>child's native language and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so;</u></p> <p>c. <u>are used for the purposes for which the assessments or measures are valid and reliable; and</u></p> <p>d. <u>are administered by trained and knowledgeable personnel in accordance with the instructions provided by the producer of the assessments.</u></p>	Based on guidance from US DOE, the language in subsection C was revised to comply with federal regulatory requirements.
	<p>* Subsection D: "A written copy of the evaluation report shall be provided at no cost to the parent(s). The report shall be available to the parent(s) no later than two business days before the meeting to determine eligibility."</p>	<p>"D. A written copy of the evaluation report shall be provided at no cost to the parent(s). The report <u>evaluation report(s) shall be available to the parent(s) no later than two business days before the meeting to determine eligibility.</u></p> <p><u>1. A written copy of the evaluation report(s) shall be provided to the parent(s) prior to or at the meeting where the eligibility group reviews the evaluation</u></p>	In response to public comment, revisions were made to clarify each LEA's responsibilities relative to the provision of evaluation reports.

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		<p><u>report(s) or immediately following the meeting, but no later than 10 days after the meeting.</u></p> <p><u>2. The evaluation report(s) shall be provided to the parent(s) at no cost.</u></p>	
	<p>Subdivisions F 3, F 4, and F 6:</p> <p>“3. As part of a reevaluation, the local educational agency shall ensure that a group comprised of the same individuals as an IEP team, and other qualified professionals, as appropriate follow the provisions of subsection B. of this section, in determining:</p> <ul style="list-style-type: none"> a. whether the child continues to have a disability; b. the child’s educational needs, including the present levels of academic achievement and related developmental needs of the child; c. whether the child continues to need special education and related services; d. whether any additions or modifications to the special education and related services are needed to meet the measurable annual goals set out in the child’s IEP and to participate, as appropriate, in the general education curriculum. <p>4. The local educational agency shall administer tests and other evaluation materials, in accordance</p>	<p>Replaced previous subdivision F 3 with the following:</p> <p><u>“The local educational agency shall conduct a reevaluation in accordance with the requirements of subsection B of this section.”</u></p> <p>Deleted subdivisions F 4 and F 6.</p>	<p>The federal regulatory requirements apply to both initial evaluations and reevaluations. Therefore, they were consolidated together in subsection B.</p>

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	with subsection B of this section, as may be needed to produce the data identified in subdivision 3. of this subsection. ... 6. This process is considered the evaluation if no additional data are needed.		
	* Subsection H 2: "...the reevaluation process, including eligibility determination, shall be completed in 65 business days from the date of the parent's consent to the evaluation."	Revised subsection H 2: "...the reevaluation process, including eligibility determination, shall be completed in 65 business days from the date of the parent's consent to <u>of the receipt of the referral by the special education administrator or designee for the evaluation.</u> "	In response to strong public comment, the trigger for the timeline for an initial evaluation was revised from the date of consent, to the date of the receipt of the referral by the special education administrator or designee.
8 VAC 20-81-80	Subsection C: "...If a determination is made that a child has a disability and needs special education and related services, an IEP shall be developed in accordance with the requirements of 8VAC20-81-110...."	Revised subsection C: "...If a determination is made that a child has a disability and needs <u>requires</u> special education and related services, an IEP shall be developed in accordance with the requirements of 8VAC20-81-110...."	This section was substantially revised <ul style="list-style-type: none"> To comply with federal regulatory requirements; To comply with public comment; and To provide clarification.
	* Subdivision D 3 through D 5: "3. Observation. a. At least one member of the eligibility group other than the child's current teacher, who is trained in observation, shall observe the child and the learning environment, including the general education classroom setting, to document academic performance and behavior in the areas of difficulty. In the case of a child of less than school age or out of school, a	Revised subdivision D 3 through D 5: "3. Observation. a. At least one member of the eligibility group other than the child's current teacher, who is trained in observation, shall observe the child and the learning environment, including the general education classroom setting to document academic performance and behavior in the areas of difficulty. In the case of a child of less than school age or out of school, a group member shall observe the child in an environment appropriate for a child of that age. ba. The local educational agency	In addition, references to the DSM were deleted, and language, which previously implied that school personnel could "diagnose" children with disabilities, was removed.

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	<p>group member shall observe the child in an environment appropriate for a child of that age.</p> <p>b. The local educational agency shall:</p> <p>(1) Have at least one member of the eligibility team conduct an observation of the child's academic performance in the general education classroom after the child has been referred for an evaluation and parental consent has been obtained, consistent with the requirements of 8 VAC 20-81-170.</p> <p>(2) Ensure that the child is observed in the child's learning environment (including the general education classroom setting) to document the child's academic performance and behavior in the areas of difficulty.</p> <p>(3) Include information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation.</p> <p>4. A child shall not be determined to be eligible...if the child does not otherwise meet the eligibility criteria, and the determinant factor is:</p> <p>a. Lack of appropriate instruction in reading...</p> <p>b. lack of appropriate instruction in math; or</p> <p>c. limited English proficiency.</p>	<p>shall:</p> <p>(1) Have at least one member of the eligibility team conduct an observation of the child's academic performance in the general education classroom after the child has been referred for an evaluation and parental consent has been obtained, consistent with the requirements of 8 VAC 20-81-170.</p> <p>(2) Ensure ensure that the child is observed in the child's learning environment (including the general education classroom setting) to document the child's academic performance and behavior in the areas of difficulty.</p> <p>(3) Include information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation.</p> <p>b. The eligibility group, in determining whether a child is a child with a disability shall:</p> <p><u>(1) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or</u></p> <p><u>(2) Have at least one member of the eligibility group conduct an observation of the child's academic performance in the general education classroom after the child has been referred for an evaluation and parental consent has been obtained consistent with the requirements of 8VAC20-81-170.</u></p> <p>c. <u>In the case of a child of less than school age or out of school, a group member shall observe the child in an environment appropriate for a child of that age.</u></p> <p>4. A child shall not be determined to be eligible...if the child does not</p>	

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	<p>5. The documentation of the determination of eligibility shall include a statement of:...</p> <p>e. The instructional strategies used and the student-centered data collected if a response to scientific, research-based intervention process was implemented and whether the child does not achieve commensurate with the child's age....</p> <p>f. For identification of learning disabilities, whether there are strengths and weaknesses in performance or achievement or both, or there are strengths and weaknesses in performance or achievement or both relative to intellectual development in one or more of the areas listed in subsection K. of this section."</p>	<p>otherwise meet the eligibility criteria, and <u>or</u> the determinant factor is:</p> <p>a. Lack of appropriate instruction in reading...</p> <p>b. lack of appropriate instruction in math; or</p> <p>c. limited English proficiency.</p> <p>5. The local educational agency <u>shall provide the parent with a copy of the documentation of the determination of eligibility at no cost.</u> The documentation of the determination of eligibility <u>This documentation</u> shall include a statement of:...</p> <p>e. The instructional strategies used and the student-centered data collected if <u>the child has participated in a response to scientific, research-based intervention process</u> was implemented and whether the child does not achieve commensurate with the child's age. ...</p> <p>f. For identification of <u>a child with a specific learning disabilities disability, whether consistent with the requirements of subdivision T.2.a. and T.2.b. of this section,</u> the child does not achieve adequately for the child's age or to meet Virginia-approved grade-level standards; and <u>(1) the child does not make sufficient progress to meet age or Virginia-approved grade-level standards; or</u> <u>[(2) the child exhibits a pattern of</u> there are strengths and weaknesses in performance, <u>or</u> or there are strengths and weaknesses in performance or achievement or both relative to <u>age, Virginia-approved grade-level standards</u> or <u>intellectual development in one or more of the areas listed in subsection K of this section.</u></p> <p><u>g. For identification of a child with a specific learning disability, the group's determination is</u></p>	

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		<u>consistent with the requirements of subdivision T.2.c. of this section.</u>	
	<p>* Subsections H and I: "H. The characteristics of each of the disabilities listed in this section shall have an adverse effect on educational performance and make it necessary for the child to have special education to address the needs of the child that result from the child's disability and to ensure access to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children. For children with developmental delay, ensuring access to the general curriculum means ensuring the child's access to the general educational activities for this age group.</p> <p>I. The Virginia Department of Education adopts criteria for determining whether a child has a disability by using the applicable determination of eligibility criteria for all children suspected of having a disability and does not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a disability."</p>	<p>Revised subsections H and I: "H. The characteristics of each of the disabilities listed in this section shall have an adverse effect on educational performance and make it necessary for the child to have special education to address the needs of the child that result from the child's disability and to ensure access to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children. For children with developmental delay, ensuring access to the general curriculum means ensuring the child's access to the general educational activities for this age group. <u>H. For all children suspected of having a disability, local educational agencies shall:</u></p> <ol style="list-style-type: none"> <u>1. use the criteria adopted by the Virginia Department of Education, as outlined in this section, for determining whether the child has a disability; and</u> <u>2. have documented evidence that by reason of the disability, the child needs special education and related services.</u> <p>I. The Virginia Department of Education adopts criteria for determining whether a child has a disability by using the applicable determination of eligibility criteria for all children suspected of having a disability and does not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a disability.</p>	
	<p>* Subsections L through S: Outlined eligibility criteria</p>	<p>Revised subsections J through W: Substantially redrafted eligibility criteria for each of the previously</p>	

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	for each of the following eligibility categories: <ul style="list-style-type: none"> • Autism • Deafness • Developmental Delay • Hearing Impairment • Intellectual Disability • Other Health Impairment • Specific Learning Disability • Speech-Language Impairment • Visual Impairment 	drafted categories, and inserted new criteria for each of the following: <ul style="list-style-type: none"> • Deaf-Blindness • Emotional Disability • Multiple Disabilities • Orthopedic Impairment • Traumatic Brain Injury 	
8 VAC 20-81-90	<p>* A. A local educational agency shall evaluate a child with a disability in accordance with 8 VAC 20-81-70 before determining that the child is no longer a child with a disability under this chapter. Evaluation is not required before the termination of eligibility due to graduation with a standard or advanced studies high school diploma or reaching the age of 22.</p> <p>B. The IEP Team shall terminate the child's eligibility for special education and related services in the following areas:</p> <ol style="list-style-type: none"> 1. Termination of special education services occurs if the team determines that the child is no longer a child with a disability who needs special education and related services. 2. A related service may be terminated during an IEP meeting without determining that the child is no longer a child with a disability who is eligible for special education and 	<p>A. <u>Termination of a child's eligibility for special education and related services shall be determined by an eligibility group.</u></p> <ol style="list-style-type: none"> 1. <u>Termination of special education services occurs if the eligibility group determines that the child is no longer a child with a disability who needs special education and related service.</u> 2. A The local educational agency shall evaluate a child with a disability... 3. Evaluation is not required... <p>B. The IEP team shall terminate the child's eligibility for special education and related services in the following areas:</p> <ol style="list-style-type: none"> 1. Termination of special education services occurs if the team determines that the child is no longer a child with a disability who needs special education and related services. 2. A a related service may be terminated during an IEP meeting without determining that the child is no longer a child with a disability who is eligible for special education and related services. <ol style="list-style-type: none"> 1. The IEP team making the <u>shall make this determination shall include local educational agency personnel representing the specific related services discipline</u> 	<p>In response to significant public comment, all Virginia-specific parental consent provisions which were removed in the proposed regulations have been reinserted, including parental consent for the partial or complete termination of special education and related services.</p>

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	<p>related services. The IEP team making the determination shall include local educational agency personnel representing the specific related services discipline being terminated.</p> <p>3. Prior to any partial or complete termination of special education and related services, the local educational agency shall comply with the prior written notice requirements of 8 VAC 20-81-170 C., but parental consent is not required.</p> <p>C. If the parent(s) revokes consent for the child to continue to receive special education and related services, the local educational agency shall follow the procedures in 8 VAC 20-81-80 to terminate the child's eligibility....</p>	<p>being terminated based on the current data in the child's education record, or by evaluating the child in accordance with 8VAC20-81-70.</p> <p><u>C. Written parental consent shall be required prior to any partial or complete termination of services.</u></p> <p><u>D. Prior to any partial or complete termination of special education and related services, the local educational agency shall comply with the prior written notice requirements of 8VAC20-81-170 C., but parental consent is not required.</u></p> <p><u>E. If the parent(s) revokes consent for the child to continue to receive special education and related services, the local educational agency shall follow the eligibility procedures in 8VAC20-81-80 to terminate the child's eligibility...</u></p>	
8 VAC 20-81-100	Subdivision A 1: "1. A free appropriate public education shall be available to all children with disabilities who need special education and related services, aged two to 21, inclusive, who meet the age of eligibility requirements in 8 VAC 20-81-10 and who reside within the jurisdiction of each local educational agency."	Subdivision A 1: "1. A free appropriate public education shall be available to all children with disabilities who need special education and related services, aged two to 21, inclusive, who meet the <u>definition of "age of eligibility" requirements as outlined in 8 VAC 20-81-10</u> and who reside within the jurisdiction of each local educational agency."	Revisions made in response to public comment and to clarify that the change is not related to the definition of "Developmental Delay." Rather, the change is intended to prevent restating information in the definition of "Age of Eligibility."
	N/A	Inserted into Subsection H a cross-reference to 8 VAC 20-81-130 A 2.	Revisions made in response to public comment.
	* Subdivision I 4: "4. ...The local educational agency responsible...shall ensure that the child receives appropriate physical education	Revised subdivision I 4: "4. ...The local educational agency responsible...shall ensure that the child receives appropriate physical education services in compliance with subdivision 3. of this	Revision made to comply with the federal regulatory requirement.

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	services in compliance with subdivision 3. of this subsection."	subsection."	
	* Subsection L outlines requirements regarding "Length of School Day".	At the end of Subsection L, inserted new sentence which states, "For preschool-aged children with disabilities, the IEP team determines the length of the school day."	This long-standing VDOE interpretation was inserted for clarity.
	Subdivision M 1: VDOE "may use whatever state, local, federal, and private sources of support are available...."	Revised subdivision M 1: VDOE "may use whatever state, local, federal, and private sources of support <u>that</u> are available...."	Word inserted to mirror federal regulatory language.
8 VAC 20-81-110	* Subdivision B 2 d required that each LEA ensure that an IEP "d. Is implemented as soon as possible following parental consent to the IEP not to exceed 30 calendar days, unless the local educational agency documents the reasons for the delay."	Revised subdivision B 2 d: "d. Is implemented as soon as possible following parental consent to the IEP; not to exceed 30 calendar days, unless the local educational agency documents the reasons for the delay.	The revision was made in response to public comment. The revised provision mirrors Virginia's current regulatory requirement.
	* Subdivision B 7: "This chapter does not require that any local educational agency, teacher, or other person to be held accountable if a child does not achieve the growth projected in the annual goals, including benchmarks or objectives...."	Deleted the subdivision.	Revision made in response to public comment. However, VDOE will provide technical assistance on this issue to consumers, as the need arises.
	* Subdivision B 8 a: "If the local educational agency considers the parent's request unreasonable and refuses to meet, the local educational agency shall advise the parent in writing of the reasons for denying the parent's request and provide the parent information on this chapter's dispute	Deleted the subdivision.	Revision made in response to public comment. However, VDOE will provide technical assistance on this issue to consumers, as the need arises.

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	resolution options.”		
	* Subdivision C 4 regarding Part C transition participants: “In the case of a child who was previously served under Part C of the Act, the local educational agency shall, at the parent’s(s) request, invite the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.”	Revised subdivision C 4: “In the case of a child who was previously served under Part C of the Act, the local educational agency shall, at the parent’s(s) request, invite the Part C service coordinator or other representatives of the Part C system <u>to the initial IEP meeting to</u> assist with the smooth transition of services.”	Revisions made to clarify federal regulatory requirements.
	Subdivision E 2: a (3) “Shall inform the parent(s) of the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child.” b (1) “For Part C transition, the notice shall inform the parents of the provisions relating to the participation of the Part C service coordinator or other representative(s) of the Part C system.”	Revised subdivision E 2: a (3) “Shall inform the parent(s) of the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child <u>under subdivision C.1.f. of this section.</u> ” b (1) “For Part C transition, the notice shall inform the parents of the provisions relating to the participation of the Part C service coordinator or other representative(s) of the Part C system <u>under subdivision C.4. of this section.</u> ”	Cross-references inserted for clarification.
	* Subdivision E 4 b: “4....the local educational agency shall have a record of the attempts to arrange a mutually agreed on time and place, such as: ... b. Copies of correspondence sent to the parent(s) and any responses received; or	Revised subdivision E 4 b: “4....the local educational agency shall have a record of the attempts to arrange a mutually agreed on time and place, such as: ... b. Copies of correspondence <u>(written, electronic, or facsimile)</u> sent to the parent(s) and any responses received; or	In response to public comment, language inserted for clarification.
	Subdivision E 6 outlined provisions regarding audio and video recordings of IEP meetings.	Entire subdivision deleted from this section and reinserted at 8 VAC 20-81-170 J.	In response to public comments, expanded the provision to apply to eligibility meetings and manifestation determination review meetings, as well as IEP

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			meetings. As revised, the provisions were more properly placed in the Procedural Safeguards section.
	* Subdivision E 7: “7. The local educational agency shall give the parent(s) a copy of the child's IEP at no cost to the parent(s) at the IEP meeting, but no later than 10 calendar days from the date of the IEP meeting.”	Subdivision E 7: “7. The local educational agency shall give the parent(s) a copy of the child's IEP at no cost to the parent(s) at the IEP meeting, <u>or within a reasonable period of time after the IEP meeting, not to exceed but no later than 10</u> calendar days from the date of the IEP meeting. ”	Revisions made in response to public comments.
	* N/A	Inserted new subdivision in F 2: 2. The IEP team also shall: ... d. Consider the communication needs of the child; e. <u>Consider the child's need for benchmarks or short-term objectives;</u> e-f. In the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, ...; and f-g. Consider whether the child requires assistive technology devices and services.	Revised these sections in response to public comments to emphasize that during the development of each child's IEP, regardless of whether or not the child is participating in Virginia Alternate Assessment Program, the IEP team must consider whether or not the child requires benchmarks or short-term objectives in order to receive FAPE. The IEP team's consideration must also be documented.
	* Subdivision G 3 regarding the content of an IEP: “3. For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives. a. The IEP team may determine that benchmarks or short-term objectives are required for other children with disabilities in order for the children to benefit educationally.”	Subdivision G 3: “3. <u>If determined appropriate by the IEP team as outlined in F 2 of this section, a description of benchmarks or short-term objectives.</u> For children with disabilities who take alternate assessments aligned to alternate achievement standards, <u>the IEP shall include a</u> description of benchmarks or short-term objectives. a. The IEP team may determine that benchmarks or short-term objectives are required for other children with disabilities in order for the children to benefit educationally. <u>a. The IEP team shall document its consideration of the inclusion</u>	

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		<u>in the child's IEP of benchmarks or short-term objectives.</u>	
	<p>* Subdivision G 4 regarding the content of an IEP:</p> <p>"4. A statement of the special education and related services and supplementary aids and services to be provided for the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to the child."</p>	<p>Revised subdivision G 4 regarding the content of an IEP:</p> <p>"4. A statement of the special education and related services and supplementary aids and services, <u>based on peer-reviewed research to the extent practicable,</u> to be provided for the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to <u>enable</u> the child:"</p>	<p>Language was inadvertently omitted from the proposed regulations, and reinserted to comply with federal regulatory provisions.</p>
	<p>* Subdivision G 6 regarding the content of an IEP:</p> <p>"a. A statement of any individual accommodations or modifications that are necessary...</p> <p>b. If the IEP team determines that the child will not participate in a particular state assessment of student achievement (or part of an assessment), a statement of:</p> <p>(1) Why that assessment is not appropriate for the child;</p> <p>(2) How the child will be assessed, including participation in the alternate assessment for those students who meet the criteria for the alternate assessment; and</p> <p>(3) How the child's nonparticipation in the assessment will impact the child's....</p> <p>c. A statement that the child shall participate in</p>	<p>Revised subdivision G 6:</p> <p>"a. A statement of any individual <u>appropriate accommodations or modifications that are necessary...</u></p> <p>b. If the IEP team determines that the child will not participate in <u>must take an alternate assessment instead of a particular state assessment of student achievement (or part of an assessment), a statement of:</u></p> <p>(1) Why that assessment is not appropriate for the child <u>the child cannot participate in the regular assessment;</u></p> <p>(2) How the child will be assessed, including participation in the alternate assessment for those students who meet <u>Why the particular assessment selected is appropriate for the child, including that the child meets the criteria for the alternate assessment; and</u></p> <p>(3) How the child's nonparticipation in the assessment will impact the child's promotion; graduation with a modified standard, standard, or advanced studies diploma; or other matters.</p> <p>c. A statement that the child shall</p>	<p>Word inserted into subdivision G 6 a to comply with federal regulatory requirements.</p> <p>Revisions to G 6 b through G 6 e were made to comply with federal regulatory requirements.</p>

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	<p>either the state assessment for all children that is part of the state assessment program or the state's alternate assessment;</p> <p>d. A statement of any individual accommodations or modifications...;</p> <p>e. If the IEP team determines that the child will not participate in a particular divisionwide assessment of student achievement (or part of an assessment), a statement of:</p> <p>(1) Why that assessment is not appropriate for the child;</p> <p>(2) How the child will be assessed;</p> <p>(3) How the child's nonparticipation in the assessment will impact the child's courses; promotion; graduation with a modified standard, standard, or advanced studies diploma; or other matters.</p>	<p>participate in either the a state assessment for all children that is part of the state assessment program or the state's alternate assessment;</p> <p>d. A statement of any individual <u>appropriate</u> accommodations or modifications approved for use in the administration of divisionwide assessments of student achievement that are needed in order for the child to participate in the assessment;</p> <p>e. If the IEP team determines that the child will not participate in <u>must take an alternate assessment instead of</u> a particular divisionwide assessment of student achievement (or part of an assessment), a statement of:</p> <p>(1) Why that assessment is not appropriate for the child <u>the child cannot participate in the regular assessment</u>;</p> <p>(2) How the child will be assessed <u>Why the particular alternate assessment selected is appropriate for the child</u>; and</p> <p>(3) How the child's nonparticipation in the assessment will impact the child's</p>	
	<p>* Subdivision G 7: 7. The projected dates (month, day, and year) for the beginning of the services and modifications and the anticipated frequency, location, and duration of those services and modifications. Location refers to the continuum of alternative placements in 8 VAC 20-81-130 B.</p>	<p>Deleted the last sentence in subdivision G 7: "7. The projected dates (month, day, and year) for the beginning of the services and modifications and the anticipated frequency, location, and duration of those services and modifications. Location refers to the continuum of alternative placements in 8 VAC 20-81-130 B."</p>	<p>Sentence deleted to comply with applicable case law.</p>
	<p>* Subdivision G 8 b: "b. When periodic reports on the progress the child is making toward meeting</p>	<p>Revised subdivision G 8 b: "b. When periodic reports on the progress the child is making toward meeting the <u>annual</u> goals</p>	<p>As a result of significant public comment, language was inserted for clarity. The new</p>

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	the goals will be provided; for example, through the use of quarterly or other periodic reports, concurrent with the issuance of report cards.”	will be provided; for example, through the use of quarterly or other periodic reports, concurrent with the issuance of report cards, <u>and at least as often as parents are informed of the progress of their children without disabilities.</u> ”	language reflects the current Virginia regulatory requirement.
	<p>* Subdivision G 10: “10. Secondary transition services. a. Prior to the child entering secondary school but beginning not later than the first IEP to be in effect when the child turns 14, or younger if determined appropriate by the IEP team, and updated annually, the IEP shall include: (1) Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; (2) The transition services, including courses of study (such as participation in advanced-placement course or career and technical education program), needed to assist the child in reaching those goals; and (3) A statement, if appropriate, of interagency responsibilities or any needed linkages. b. For a child pursuing a modified standard diploma, the IEP team shall consider the child’s need for occupational readiness upon school completion, including consideration of courses</p>	<p>Revised subdivision G 10: “10. Secondary transition services. a. Prior to the child entering secondary school but not later than the first IEP to be in effect when the child turns 14, or younger if determined appropriate by the IEP team, and updated annually <u>thereafter</u>, the IEP shall include <u>age-appropriate</u>: (1) Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; <u>and</u> (2) The transition services, including courses of study (such as participation in advanced-placement course or career and technical education program), needed to assist the child in reaching those goals. <u>Transition services shall be based on the individual child’s needs, taking into account the child’s strengths, preferences, and interests.</u> b. <u>Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP team, and updated annually, in addition to the requirements in subdivision 10.a. of this subsection, the IEP shall also include (3) A a statement, if appropriate, of interagency responsibilities or any linkages.</u> bc. For a child pursuing a modified standard diploma, the IEP team shall consider the child’s need for occupational readiness upon</p>	<p>In response to public comment, secondary transition services will begin at age 14, rather than age 16. However, the language was revised to clarify the difference regarding the LEA’s responsibilities for providing transition services to a child with a disability at age 14 versus age 16.</p>

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	to prepare the child as a career and technical education program completer. c. Transition services shall be based on the individual child's needs, taking into account the child's strengths, preferences, and interests."	school completion, including consideration of courses to prepare the child as a career and technical education program completer. c. Transition services shall be based on the individual child's needs, taking into account the child's strengths, preferences, and interests."	
	* Subdivision G 11: "11. Beginning at least one year before a student reaches the age of majority, the student's IEP shall include a statement that the student has been informed of the rights under this chapter, if any, that will transfer to the student on reaching the age of majority."	Revised subdivision G 11: "11. Beginning at least one year before a student reaches the age of majority, the student's IEP shall include a statement that the student <u>and parent(s) has have</u> been informed of the rights under this chapter, if any, that will transfer to the student on reaching the age of majority."	Revised in response to public comment.
8 VAC 20-81-120	* Subdivisions A 2 through A 4: "2. The new local educational agency shall provide a free appropriate public education to the child, in consultation with the parent(s), including services comparable to those described in the child's IEP from the previous local educational agency, until the new local educational agency either: a. adopts the child's IEP from the previous local educational agency; or b. conducts an evaluation, if determined necessary by the local educational agency, and develops and implements a new IEP that meets the requirements in this chapter. 3. The local educational agency may develop and implement an interim IEP	Revised subdivisions A 2 through A 4: "2. The new local educational agency shall provide a free appropriate public education to the child, <u>including ensuring that the child has available special education and related services</u> , in consultation with the parent(s), including services comparable to those described in the child's IEP from the previous local educational agency, until the new local educational agency either: a. Adopts <u>and implements</u> the child's IEP from the previous local educational agency <u>with the parent's consent</u> ; or b. Conducts an evaluation, if determined necessary by the local educational agency, and develops and implements a new IEP <u>with the parent's consent</u> that meets the requirements in this chapter. 3. The <u>new</u> local educational agency may develop and	In response to public comment, reinserted all Virginia-specific parental consent requirements, including those relative to children with disabilities who transfer.

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	<p>while obtaining and reviewing whatever information is needed to develop a new IEP.</p> <p>4. If the parent does not provide written consent to a new IEP or an interim IEP, the local educational agency shall provide FAPE, in consultation with the parent(s), including services comparable to those described in the child's IEP from the previous local educational agency.</p> <p>a. The parent(s) or local educational agency may initiate the dispute resolution options of mediation or due process to resolve the dispute."</p>	<p>implement an interim IEP <u>with the parent's consent</u> while obtaining and reviewing whatever information is needed to develop a new IEP.</p> <p>4. <u>If the parent(s) and the local educational agency are unable to agree on interim services or a new IEP, If the parent does not provide written consent to a new IEP or an interim IEP, the local educational agency shall provide FAPE, in consultation with the parent(s), including services comparable to those described in the child's IEP from the previous local educational agency. The</u> the parent(s) or local educational agency may initiate the dispute resolution options of mediation or due process to resolve the dispute. <u>During the resolution of the dispute, the local educational agency shall provide FAPE in consultation with the parent(s), including services comparable to those described in the child's IEP from the previous local educational agency."</u></p>	
	<p>* Subsection C: "C. If the local educational agency determines it necessary to conduct an evaluation of the child, the local educational agency shall provide proper notice, initiate evaluation procedures, conduct the evaluation, determine eligibility, and develop an IEP in accordance with this chapter. During the evaluation period, the local educational agency shall provide FAPE in consultation with the parent(s), including services comparable to those described in the child's IEP from the previous local educational agency."</p>	<p>Revised subsection C:</p> <p>C. If the local educational agency determines it necessary to conduct an evaluation of the child, the local educational agency shall provide proper notice, initiate evaluation procedures, conduct the evaluation, determine eligibility, and develop an IEP in accordance with this chapter.</p> <p>1. <u>During the evaluation period, child shall receive services in accordance with the existing IEP, excluding the sections of the IEP that are not in accordance with this chapter.</u></p> <p>2. the <u>The local educational agency shall inform the parent(s) of the sections of the existing IEP that are not in accordance with this chapter. provide FAPE in consultation with the parent(s),</u></p>	

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		including services comparable to those described in the child's IEP from the previous local educational agency.	
8 VAC 20-80-130	Subdivision A 1 a: “a. That to the maximum extent appropriate, children with disabilities, including those in public or private institutions or other care facilities, are educated with children without disabilities....”	Revised subdivision A 1 a: “a. That to the maximum extent appropriate, children with disabilities, <u>aged two to 21, inclusive</u> , including those in public or private institutions or other care facilities, are educated with children without disabilities....”	<p>Revisions were made in response to public comment to:</p> <ul style="list-style-type: none"> clarify that the provisions regarding LRE apply to preschool students; link the requirements regarding the provision of supplementary aids and services in nonacademic settings, which appears in the FAPE section, to similar requirements which appear in this section; and reinsert the continuum of alternative placements. This language had been moved to the definition of “special education,” but was reinserted for clarity.
	N/A	Inserted cross-reference to 8 VAC 20-81-100 H. in 8 VAC 20-81-130 A 2.	
	Subdivision B 2. “2. The continuum shall: a. Include the alternative placements listed in the term “special education” at 8VAC20-81-10....”	Subdivision B 2. “2. The continuum shall: a. Include the alternative placements listed in the term “special education” at 8VAC20-81-10, <u>including instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions....</u> ”	
8 VAC 20-80-150	Subdivision C 1: 1. Definitions applicable to this subsection.	Revised subdivision C 1: 1. Definitions applicable to this subsection The following <u>definitions are applicable for purposes of this subsection.</u>	Revisions were made to clarify that these definitions apply for purposes of these regulations only.
	* Subdivision C 2 b: “Each local school division shall consult with appropriate representatives of the private schools on how to	Revised subdivision C 2 b: “Each local school division shall consult with appropriate representatives of the private schools <u>and representatives of parents of parentally-placed</u>	In response to guidance from US DOE, revisions were made to ensure compliance with federal regulatory requirements.

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	carry out the child find activities...."	<u>private schools children with disabilities</u> on how to carry out the child find activities...."	
	* Subdivision C 4 c: "c. ...the local school division shall determine the number of parentally placed private school children with disabilities attending private schools located in the local school division, and ensure that the count is conducted by December 1 of each year...."	Revised subdivision C 4 c: "c. ...the local school division shall determine the number of parentally placed private school children with disabilities attending private schools located in the local school division, and ensure that the count is conducted by December 1 of each year <u>on a date between October 1 and December 1 of each year, as determined by the Superintendent of Public Instruction or designee....</u> "	
	* Subdivision C 5 a (5): (5) How and when those decisions will be made.	Revised subdivision C 5 a (5): (5) How and when those decisions will be made, <u>including how parents, teachers and private school officials will be informed of the process.</u>	
8 VAC 20-80-160	* Subsection A: "General. A child with a disability shall be entitled to the same due process rights that all children are entitled to under the Code of Virginia and the local educational agency's disciplinary policies and procedures. School personnel may consider any unique circumstances on a case-by-case basis when deciding whether or not to order a change in placement for a child with a disability that violates a code of student conduct."	Divided proposed subsection A into subdivisions A 1 and A 3; and inserted new provisions A 2, A 3 a, and A 3 b: "2. In the event that the child's <u>behavior impedes the child's learning or that of others, the IEP team shall consider the use of positive behavioral interventions, strategies, and supports to address the behavior. The IEP team shall consider either:</u> a. <u>developing goals and services specific to the child's behavioral needs, or</u> b. <u>conducting a functional behavioral assessment and determining the need for a behavioral intervention plan to address the child's behavioral needs.</u> " 3. School personnel may consider any unique circumstances.... a. <u>In reviewing the disciplinary incident, school personnel may</u>	In response to public comments, inserted additional language regarding functional behavioral assessments (FBAs) and behavioral intervention plans (BIP) for clarity and to assist school administrators in making decisions regarding disciplinary incidents based on the child's unique circumstances. Inserted additional language to assist parents and school administrators in understanding procedural protections for parents who disagree with an evaluation obtained by the LEA as part of the FBA process.

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		<p><u>review the child's IEP and any behavioral intervention plan, and/or consult with the child's teacher(s) to provide further guidance in considering any unique circumstances related to the incident.</u></p> <p><u>b. School personnel may convene an IEP team for this purpose.</u></p>	
	* N/A	<p>Inserted new subdivisions in D 6 a:</p> <p><u>"(1) A functional behavioral assessment may include a review of existing data or new testing data or evaluation as determined by the IEP team.</u></p> <p><u>(2) If the IEP team determines that the functional behavioral assessment will include obtaining new testing data or evaluation, then the parent is entitled to an independent educational evaluation in accordance with 8VAC20-81-170 B. if the parent disagrees with the evaluation or a component of the evaluation obtained by the local educational agency; or"</u></p>	
	<p>* Subdivision C 5 regarding "Special Circumstances":</p> <p>"a. School personnel may remove a child with a disability to an appropriate interim alternative educational setting..., if:</p> <p>(1) The child carries a weapon to or possesses a weapon at school or a school function under the jurisdiction of a local educational agency or the Virginia Department of Education; or</p> <p>(2) The child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled</p>	<p>Revised subdivision C 5:</p> <p>"a. School personnel may remove a child with a disability to an appropriate interim alternative educational setting..., if:</p> <p>(1) The child carries a weapon to or possesses a weapon at school, <u>on school premises, or at</u> a school function under the jurisdiction of a local educational agency or the Virginia Department of Education; or</p> <p>(2) The child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, <u>on school premises, or at</u> a school function under the jurisdiction of a local educational agency or the Virginia</p>	Based upon guidance from US DOE, revised the language to comply with federal regulatory requirements.

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	<p>substance while at school or a school function under the jurisdiction of a local educational agency or the Virginia Department of Education; or</p> <p>b. The child inflicts seriously bodily injury upon another person at school or a school function under the jurisdiction of a local educational agency or the Virginia Department of Education.</p> <p>c. For purposes of this part, 'weapon,' 'controlled substance,' and 'serious bodily injury' have the meaning given the terms under 8VAC20-81-10."</p>	<p>Department of Education; or</p> <p>b(3). The child inflicts seriously bodily injury upon another person at school, <u>on school premises</u>, or <u>at a school function</u> under the jurisdiction of a local educational agency or the Virginia Department of Education.</p> <p>eb. For purposes of this part, 'weapon,' 'controlled substance; and 'serious bodily injury' have the meaning given the terms under 8VAC20-81-10."</p>	
	* Subdivision F 1: "A local educational agency may request an expedited due process hearing...if the local educational agency believes that the child's behavior is likely to result in injury to self or others."	Revised subdivision F 1: "A local educational agency may request an expedited due process hearing...if the local educational agency believes that the child's behavior is <u>substantially</u> likely to result in injury to self or others."	The word was inadvertently omitted from the proposed regulations, and was inserted based on public comments, and to comply with federal regulatory requirements.
8 VAC 20-81-170	Subdivision B 3 a indicated that parent-initiate evaluations "Shall be considered by the local educational agency, if it meets local educational agency criteria, in any decision regarding a free appropriate public education for the child; and"	Revised subdivision B 3 a: "Shall be considered by the local educational agency, if it meets local educational agency criteria, in any decision regarding <u>the provision of a free appropriate public education</u> for <u>to</u> the child; and"	Language was revised for clarity.
	Subdivision D 1 e: "e. On the date on which the decision is made to make a disciplinary removal that constitutes a change in placement.	Revised subdivision D 1 e: "e. On the date on which the decision is made to make a disciplinary removal that constitutes a change in placement <u>because of a violation of a code of student conduct</u> .	Language inserted for clarity.

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	* Subsection E regarding parental consent.	Reinserted Virginia-specific requirements that parental consent must be obtained before any partial or complete termination of special education and related services, and prior to the provision of a free appropriate public education to children with disabilities who transfer.	In response to significant public comment, all Virginia-specific parental consent provisions which were removed in the proposed regulations have been reinserted.
	* Subdivision E 2 d indicated parental consent is not required before the "Administration of a test or other evaluation that is used to measure progress on the child's IEP goals;"	Revised subdivision E 2 d: Administration of a test or other evaluation that is used to measure progress on the child's IEP goals <u>and is included in the child's IEP;</u> "	Inserted language was inadvertently omitted from the proposed regulations and was reinserted for clarity.
	* Subdivision E 8 b: "8. To meet the reasonable measures requirement of this section, ... b. Copies of correspondence sent to the parent(s) and any responses received; and"	Revised subdivision E 8 b: "8. To meet the reasonable measures requirement of this section, ... b. Copies of correspondence <u>(written, electronic, or facsimile)</u> sent to the parent(s) and any responses received; and	In response to public comment, language inserted for clarity.
	* Subdivision G 1 c: "A local educational agency may presume that a parent has authority to inspect and review records relating to the parent's children unless the local educational agency has been advised that the parent does not have the authority under applicable Virginia law governing such matters as guardianship, separation, and divorce."	Subdivision G 1 c: "A local educational agency may presume that a parent has authority to inspect and review records relating to the parent's children unless the local educational agency has been advised <u>provided a copy of a judicial order or decree, or other legally-binding documentation</u> , that the parent does not have the authority under applicable Virginia law governing such matters as guardianship, separation, and divorce."	The proposed language mirrored the federal regulatory requirement. However, based on public comment, revised language to provide clarity and to ensure that non-custodial parents receive appropriate procedural protections.
	* N/A	Inserted new subdivision G 5 c: " <u>c. A local educational agency may not charge a fee for copying a child's IEP that is required to be provided to the parent(s) in accordance with 8VAC20-81-110 E.7.</u> "	Language inserted to comply with federal regulatory requirements.

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	* N/A	<p>Inserted new language in subdivision G 9 regarding hearing procedures: <u>"a. The local educational agency may:</u> <u>(1) develop local procedures for such a hearing process; or</u> <u>(2) obtain a hearing officer from the Supreme Court of Virginia's special education hearing officer list in accordance with the provisions of 8VAC20-81-210 G."</u></p>	Language inserted for clarity.
	* N/A	<p>Inserted new subdivision G 11 b: <u>"b. Each local educational agency shall ensure that electronic communications via e-mails or facsimiles regarding any matter associated with the child, including matters related to IEP meetings, disciplinary actions, or service delivery, be part of the child's educational record."</u></p>	Language inserted in response to public comments.
	* N/A	<p>Deleted language from proposed 8 VAC 20-81-110 E 6, and reinserted into new subsection J. in this section.</p> <p>In addition, modified language, as outlined below: <u>"J. Audio and video recording.</u> <u>1. The local educational agency shall permit the use of audio recording devices at IEP meetings convened to determine a child's eligibility under 8VAC20-81-80, to develop, review, or revise the child's IEP under 8VAC20-81-110 F., and to review discipline matters under 8VAC20-81-160 E. The parent(s) shall inform the local educational agency before the meeting in writing, unless the parents cannot write in English, that they will be audio recording the meeting. ...</u> <u>2. The local educational agency may have policies that prohibit, limit or otherwise regulate the use of:</u></p>	In response to public comments, revised these provisions to apply to eligibility meetings and manifestation determination review meetings, as well as IEP meetings. Given the expanded scope of the provisions, they were moved from the section regarding IEPs to the section on Procedural Safeguards.

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		<p>a. video recording devices at IEP meetings <u>convened pursuant to this chapter</u>; or</p> <p>b. Audio or video recording devices at meetings other than <u>those meetings that are identified in subdivision 1 of this subsection for the purposes of developing, reviewing, revising the child's IEP or reviewing matters related to discipline provisions under 8VAC20-81-160.</u></p> <p>3. These policies shall: ...</p>	
8 VAC 20-80-180	* Subdivision B 2: 2. The local educational agency shall include a statement on the IEP...that the student has been informed of the rights that will transfer to the student on reaching the age of 18.	Revised subdivision B 2: 2. The local educational agency shall include a statement on the IEP...that the student and parent(s) has have been informed of the rights that will transfer to the student on reaching the age of 18.	Revisions were made in response to public comments.
8 VAC 20-81-190	* Subsection A: Requires that each LEA inform parents "of the option of mediation to resolve disputes involving the identification, evaluation of the child, or educational placement and services of the child or the provision of a free appropriate public education to the child, including matters arising prior to the filing of a state complaint or request for a due process hearing."	Revised subsection A: Requires that each LEA inform parents "of the option of mediation to resolve disputes involving <u>any matter arising under Part B of the Act, including</u> the identification, evaluation of the child , or educational placement and services of the child, or the provision of a free appropriate public education to the child, including and matters arising prior to the filing of a state complaint or request for a due process hearing."	Based on guidance from US DOE, language was inserted to clarify the exact language of the federal statute and regulations.
	Subdivision F 1: "An individual who serves as a mediator: 1. May not be an employee of any local educational agency or the Virginia Department of Education if the Virginia Department of Education is providing direct services	Revised subdivision F 1: "An individual who serves as a mediator: 1. May not be an employee of any local educational agency or the Virginia Department of Education if the Virginia Department of Education <u>it</u> is providing direct services to a child...;"	Language was changed for clarity.

Section number	Requirement at proposed stage	What has changed	Rationale for change
	to a child...,”		
8 VAC 20-81-200	Subdivision D 1 b: “The Virginia Department of Education shall establish a timeline in the notification letter for submission of any additional information so as not to delay completing the investigation within the 60 day regulatory timeline.”	Revised subdivision D 1 b: “The Virginia Department of Education shall establish a timeline in the notification letter for submission of any additional information so as not to delay completing completion of the investigation within the 60 day regulatory timeline <u>60 calendar days</u> .”	Language was changed for clarity.
8 VAC 20-81-210	Subsection A: “The Virginia Department of Education administers a special education due process hearing system to resolve disputes between parents and local educational agencies regarding the:”	Revised subsection A: “The Virginia Department of Education administers a <u>provides for an impartial</u> special education due process hearing system to resolve disputes between parents and local educational agencies regarding the:”	Language was changed for clarity.
	* Throughout the section, the proposed regulations indicated that responsibility for the implementation of the due process hearing system would be shifted exclusively to VDOE, rather than the responsibility being shared, in part, with the Supreme Court of Virginia.	Throughout the section language was changed to note that the Supreme Court of Virginia continues to maintain certain responsibilities, rather than shifting those responsibilities to the Virginia Department of Education.	Based on significant public comment and to avoid even the appearance of impropriety, the Supreme Court of Virginia will continue to be responsible for the administration of the due process system, including recruitment, selection, and appointment of special education hearing officers, and applicable training. Therefore, all provisions regarding VDOE’s administration of the due process system were deleted.
	* N/A	Insert new subsection B: “B. The Virginia Department of Education uses the impartial hearing officer system that is administered by the Supreme Court of Virginia.”	
	* Subdivisions B 1 through B 3 indicated that VDOE would establish procedures for the following: Recruitment, selection, and appointment of Special Education Hearing Officers; providing Special Education Hearing	Deleted subdivisions B 1 through B 3. Inserted new subsection C: “ <u>The Virginia Department of Education uses the list of hearing officers maintained by the Office of the Executive Secretary of the Supreme Court of Virginia and its Rules of Administration for the names of individuals to serve as</u>	

Section number	Requirement at proposed stage	What has changed	Rationale for change
	Officers specialized training regarding applicable laws and regulations impacting children with disabilities, knowledge of disabilities and special education programs, case law, management of hearings, and decision writing; and evaluation, continued eligibility, and disqualification requirements of Special Education Hearing Officers.	<p><u>special education hearing officers. In accordance with the Rules of Administration, the Virginia Department of Education provides the Office of the Executive Secretary annually the names of those special education hearing officers who are recertified to serve in this capacity."</u></p> <p>Inserted new subdivisions D 1 through D 3., which indicate that VDOE will establish procedures for the following: Providing Special Education Hearing Officers specialized training regarding applicable laws and regulations impacting children with disabilities, knowledge of disabilities and special education programs, case law, management of hearings, and decision writing; establishing the number of Special Education Hearing Officers who shall be certified to hear special education due process cases; and the process for evaluation, continued eligibility and disqualification requirements of Special Education Hearing Officers. Subdivision C 3 also outlines factors relative to a Special Education Hearing Officer's recertification process.</p> <p>Proposed subdivision B 4 has been retained as C 4.</p>	
	* Subdivision D 1: "A request for a hearing shall be made in writing to the local educational agency and the Virginia Department of Education."	Subdivision F 1: "A request for a hearing shall be made in writing to the local educational agency and to the Virginia Department of Education. <u>A copy of that request shall be delivered contemporaneously by the requesting party to the other party."</u>	Based on public comments, revisions were made to require that regardless of which party files a due process request, the request must be made in writing, and provided contemporaneously to both VDOE and the other party.
	* Subdivision D 6: "6. The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were	Subdivision F 6: "6. The party requesting the due process hearing shall not be allowed <u>The special education hearing officer has the discretionary authority to permit</u>	Although the proposed provision mirrored federal regulatory requirements, based on significant public comment and to ensure fairness, revisions

Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>not raised in the notice filed as described in subdivision 2. of this subsection.</p> <p>a. If the local educational agency is not the initiating party to the due process hearing proceeding, the Special Education Hearing Officer has the discretionary authority to permit the local educational agency to raise issues at the hearing that were not raised in the parent's(s') request for due process in light of particular facts and circumstances of the case.</p>	<p><u>either party</u> to raise issues at the due process hearing that were not raised in the notice filed as described in subdivision 2. of this subsection <u>by the party requesting the due process hearing in light of particular facts and circumstances of the case.</u></p> <p>a. If the local educational agency is not the initiating party to the due process hearing proceeding, the Special Education Hearing Officer has the discretionary authority to permit the local educational agency to raise issues at the hearing that were not raised in the parent's(s') request for due process in light of particular facts and circumstances of the case.</p>	<p>were made to grant special education hearing officers the authority to permit either party, not just the local educational agency, to raise issues at the hearing that were not raised in the due process notice.</p>
	<p>Subdivision I 3:</p> <p>b. The record of the hearing and the findings of fact and decisions shall be provided at no cost to the parent(s).</p>	<p>Subdivision K 3:</p> <p>"b. The record of the hearing and the findings of fact and decisions shall be provided at no cost to the parent(s), <u>even though the applicable appeal period has expired.</u></p>	<p>Language inserted for clarification.</p>
	<p>* N/A</p>	<p>Inserted new provision L 6: <u>"6. Review and approve implementation plans filed by local educational agencies pursuant to hearing officer decisions in hearings that have been fully adjudicated."</u></p> <p>Inserted new provision N 16: <u>"Develop and submit to the Virginia Department of Education an implementation plan, with copy to the parent(s) within 45 calendar days of the hearing officer's decision in hearings that have been fully adjudicated."</u></p> <p><u>a. If the decision is appealed or the school division is considering an appeal and the decision is not an agreement by the hearing officer with the parent(s) that a change in placement is</u></p>	<p>Based on public comment, the role of implementation plans were reinserted to ensure that LEAs comply with hearing officers' decisions. However, to address concerns regarding duplicative processes, an implementation plan is now only required for fully adjudicated decisions, rather than for any decision of the hearing officer involving the dismissal of a case or the withdrawal of the due process request.</p>

Section number	Requirement at proposed stage	What has changed	Rationale for change
		<p><u>appropriate, then the decision and submission of implementation plan is held in abeyance pursuant to the appeal proceedings.</u></p> <p><u>b. In cases where the decision is an agreement by the hearing officer with the parent(s) that a change in placement is appropriate, the hearing officer's decision must be implemented while the case is appealed and an implementation plan must be submitted by the local educational agency.</u></p> <p><u>c. The implementation plan:</u></p> <p><u>(1) must be based upon the decision of the hearing officer.</u></p> <p><u>(2) shall include the revised IEP If the decision affects the child's educational program.</u></p> <p><u>(3) shall contain the name and position of a case manager in the local educational agency charged with implementing the decision.</u></p>	
	* Subdivision L 9: The LEA shall "Upon request, provide information to the special education hearing officer to assist in the special education hearing officer's administration of the hearing;"	Subdivision N 9: The LEA shall "Upon request, provide information to the special education hearing officer to assist in the special education hearing officer's administration of <u>the a fair and impartial</u> hearing;"	The language was inadvertently omitted from the proposed language.
	* N/A	Inserted new provision O 5 b: At the prehearing stage " <u>b. Determine when an IDEA due process notice also indicates a Section 504 dispute, whether to hear both disputes in order to promote efficiency in the hearing process and avoid confusion about the status of the Section 504 dispute</u> ".	Inserted language based on public comment to ensure uninterrupted and consistent proceedings.
	* Subdivision M 14: "Report findings of fact and decisions in writing to the parties but if a party is represented by an	Subdivision O 14: "Report findings of fact and decisions in writing to the parties but if a party is represented by an attorney, then to their attorney	Revisions were made in response to public comments.

Section number	Requirement at proposed stage	What has changed	Rationale for change
	attorney, then to their attorney and the Virginia Department of Education.”	<u>and their attorneys</u> and the Virginia Department of Education.”	
	* Subdivision N 3 b: “The special education hearing officer may request an order of enforcement for a subpoena in the circuit court of the jurisdiction in which the hearing is to be held.”	Subdivision P 3 b: “The special education hearing officer <u>or a party</u> may request an order of enforcement for a subpoena in the circuit court of the jurisdiction in which the hearing is to be held.”	Language inserted for clarity.
	* N/A	Inserted new Q 1 e: “ <u>The parties may enter into a confidentiality agreement as part of their resolution agreement. There is nothing in this chapter, however, that requires the participants in a resolution meeting to keep the discussion confidential or make a confidentiality agreement a condition of a parents’ participation in the resolution meeting.</u> ”	Language inserted for clarity.
	* Subdivision O 2 d: “If the local educational agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented as required to gain parental consent),”	Subdivision Q 2 d: “If the local educational agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented as required to gain parental consent <u>in accordance with the provision in 8VAC20-81-110 E 4),....</u> ”	In response to public comments and guidance from US DOE, revisions were made to clarify the LEA’s responsibility to document efforts to obtain parental participation in a resolution session.
	* N/A	Inserted new R 2 c: “The resolution period is part of, and not separate from, the expedited due process hearing timeline.”	Language inserted for clarity.
	* Subdivision Q 1: “1. The costs of an independent educational evaluation, Special Education Hearing Officer, court reporters, and transcripts which are incidental to the hearing are shared equally by the local educational agency and the Virginia Department of Education. Costs for any of these	Subdivision S 1: “1. The costs of an independent educational evaluation <u>ordered by the special education hearing officer</u> , Special Education Hearing Officer, court reporters, and transcripts that are incidental to the hearing are shared equally by the local educational agency and the Virginia Department of Education. Costs for any of these services incurred by a party for the specific benefit of that party’s case are the	Based on guidance from US DOE, revised language to clarify if the parent disagrees with the evaluation completed by the LEA, the parent is entitled to an IEE at public expense.

Section number	Requirement at proposed stage	What has changed	Rationale for change
	services incurred by a party for the specific benefit of that party's case are the responsibility of that party."	responsibility of that party."	
8 VAC 20-81-220	* Subdivision B 1 a: "The biological parent(s) are allowing relatives...to act as a parent;"	Revised subdivision B 1 a: "The biological parent(s) are allowing relatives...to act as a parent;"	The provision applies to all individuals meeting the definition of "parent," not just "biological parent."
	* Subdivision B 2: "The local educational agency shall appoint a surrogate parent for a child, aged two to 21, inclusive, who is suspected of having or determined to have a disability when: a. No parent,...can be identified; b. The local educational agency...cannot discover the whereabouts of a parent; c. The child is a ward of the state; or d. The child is an unaccompanied homeless youth as defined in §725(6) of the McKinney-Vento Homeless Assistance Act (42 USC §1143a(6)) and §22.1-3 of the Code of Virginia."	Subdivision B 2: <u>"Unless one of the exceptions outlined in subdivision B.1. of this section applies, The</u> the local educational agency shall appoint a surrogate parent for a child, aged two to 21, inclusive, who is suspected of having or determined to have a disability when: a. No parent, as defined in 8VAC20-81-10, can be identified; b. The local educational agency, after reasonable efforts, cannot discover the whereabouts of a parent; c. The child is a ward of the state <u>and either subdivision 1.a. or 1.b. of this subsection is also met;</u> or d. The child is an unaccompanied homeless youth as defined in §725(6) of the McKinney-Vento Homeless Assistance Act (42 USC §1143a(6)) and §22.1-3 of the Code of Virginia <u>and either subdivision 1.a. or 1.b. of this subsection is met.</u>	In response to public comment, revised language to indicate that if a child with a disability is either an unaccompanied homeless youth or a ward of the state, a surrogate parent only needs to be appointed if no one meeting the definition of "parent" can be identified or the LEA cannot discover the whereabouts of a parent.
	Subdivisions B 5 through B 7.	Reorganized provisions in a new subsection as C 1 through C 3.	Revisions made for clarity.
	* Subdivision B 5: "The local educational agency shall establish procedures for determining whether a child needs a surrogate parent."	Subdivision C 1: "The local educational agency shall establish procedures <u>in accordance with the requirements of this chapter,</u> for determining whether a child needs a surrogate parent."	In response to public comment inserted clarifying language.
	* Subdivision B 7 b outlined that a surrogate parent's appointment may be terminated if:	Subdivision C 3 b outlines that a surrogate parent's appointment may be terminated if: "The child is found no longer	In response to public comment, all Virginia-specific parental consent provisions which were

Section number	Requirement at proposed stage	What has changed	Rationale for change
	“The child is found no longer eligible for special education services;”	eligible for special education services <u>and the surrogate parent has consented to the termination of services;</u> ”	removed in the proposed regulations have been reinserted.
	* Subdivision C 2 c indicated that during the appointment of a surrogate parent, there should be “Consideration of the appointment of a qualified person of the same racial, cultural, or linguistic background as the child;”	Subdivision D 2: Deleted the language previously included in C 2 c.	Based on guidance from US DOE, the language was deleted.
8 VAC 20-81-230	* Subdivision B 1 d: “A copy of the local school division's interagency agreement regarding the provision of special education and related services in a regional or local jail....” * Subdivision G 2: “A copy of this agreement shall be submitted with the annual plan specified in subsection B of this section.”	Revised subdivision B 1 d: “ A copy of <u>Any revisions to</u> the local school division's interagency agreement regarding the provision of special education and related services in a regional or local jail....” Subdivision G 2: “A copy of <u>any revisions to</u> this agreement shall be submitted with the annual plan specified in subsection B of this section.”	Revisions made to limit unnecessary paperwork and to comply with current practice regarding the submission of a LEA's Annual Plan.
	* Subdivision D 1 regarding membership in local advisory committees: “a. A majority of the committee shall be parents of children with disabilities or individuals with disabilities. b. The committee shall include representation of gender and the ethnic population of the local school division.”	Revised subdivision D 1: “a. A majority of the committee shall be parents of children with disabilities or individuals with disabilities. b. <u>The committee shall include one teacher. The committee shall include representation of gender and the ethnic population of the local school division.</u> c. <u>Additional local school division personnel shall serve only as consultants to the committee.</u> ”	Revisions were made in response to significant public comment. The requirement for school divisions to have a LAC was retained. However, revisions were made to ensure LACs could continue to be effective, while limiting the role of LEA personnel to remove the appearance of impropriety.
	* Subdivision F 2: “The local school division shall participate in transition planning conferences...in accordance with 34 CFR § 303.148(b).”	Revised subdivision F2: “The local school division shall participate in transition planning conferences...in accordance with <u>34 CFR § 303.148(b) §1437(a)(9) of the Act, and its federal implementing regulations.</u> ”	Revisions were made based upon guidance from US DOE.
8 VAC 20-	* Subsection C:	Revised Subsection C:	Revisions were made to

Section number	Requirement at proposed stage	What has changed	Rationale for change
81-250	1. Subject to availability, reimbursement may be made available...pursuant to policies and procedures established by the Virginia Board of Education. 2. Such reimbursement shall be in lieu of the state per pupil basic aid otherwise available for each child.	1. Subject to availability, reimbursement may be made available...pursuant to policies and procedures established by the Virginia Board of Education <u>Superintendent of Public Instruction or designee</u> . 2. Such reimbursement shall be in lieu of the state per pupil basic aid <u>otherwise other state education funding</u> available for each child.	comply with the Virginia Appropriations Act and the Standards of Quality funding formulae.
8 VAC 20-81-300	Subdivision A 2 a: “(1) May not require the parent(s) to sign up for or enroll in public insurance programs in order for their child to receive a free appropriate public education;”	Revised subdivision A 2 a: “(1) May not require the parent(s) to sign up for or enroll in public <u>benefits or</u> insurance programs in order for their child to receive a free appropriate public education;”	Revisions made to comply with federal regulatory requirements.
8 VAC 20-81-320	Subdivision C 1: “...having the knowledge and skills to service children with disabilities....”	Revised subdivision C 1: “...having the knowledge and skills to service <u>serve</u> children with disabilities....”	Typographical error.
	* Subdivision C 1 b: “b. Additional education personnel to provide required related services as delineated in the child's IEP.”	Inserted new language in subdivision C 1 b: “b. Additional education personnel to provide required related services as delineated in the child's IEP. <u>Related services providers must be qualified consistent with the requirements of subdivision 19(a) of 8VAC20-81-20.</u> ”	Language inserted to comply with federal regulatory requirements.
8 VAC 20-81-340	Referenced caseloads for “Severe Disabilities”.	Deleted references to “Severe Disabilities”.	References to “Severe Disabilities” were deleted from other sections of the regulations, but inadvertently were retained in this section.
	References to “Developmental Delay: age 5-8”	Revised: “Developmental Delay: age 5- 8 6”	The revision was made in response to public comments.
	Outlined case load standards in Figure 1.	Revised caseload standards for Level II children with a paraprofessional 100% of the time,	The caseload standards were revised to correct typographical errors. As

Section number	Requirement at proposed stage	What has changed	Rationale for change
		<p>who have an Emotional Disability, Hearing Impairment, Learning Disability, Intellectual Disability, Orthopedic Impairment, or Other Health Impairment.</p> <p>Clarified that there are not caseload standards for Level II children with Speech or Language Impairment.</p>	corrected, the caseload standards mirror current requirements.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

See attached document.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Note: The current regulations are proposed for repeal (8 VAC 20-80-10, et seq.) and new regulations (8 VAC 20-81-10, et seq.) are being promulgated.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
8 VAC 20-80 et seq.	8 VAC 20-81 et seq.	Repealed	The following revisions were made throughout the chapter: Since the Board of Education closed the Virginia School for the Deaf, Blind, and Multi-Disabled at Hampton (VSDB-H), references to it were deleted. In response to public comment, the term “mental retardation” was replaced with “intellectual disability,” and the term “emotional disturbance” was replaced with “emotional disability.” To ensure consistency, the term “LEA” was replaced with “local educational agency. In addition, for clarity and accuracy, citation, typographical, and grammatical errors were corrected. Finally, in some sections, such as regarding Surrogate Parents, sections were reorganized for clarity.
Foreword and Preamble	Foreword and Preamble	Repealed	Although not regulatory, it is noted that the Foreword was substantially rewritten to reflect updated information, and the Preamble was modified in response to public comment, and

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			to note the impact of the No Child Left Behind Act of 2001.
10 Repealed	10 Definitions	Repealed	<p>Definitions for the following terms have been added to comply with federal requirements, or to provide clarity: Act; Alternative assessment; Career and technical education; Collaboration; Core academic subjects; Co-teaching; Dangerous weapon; Destruction of information; Educational placement; Educational service agencies; Eligible student; Equipment; Excess costs; Federal core academic subjects; Highly qualified special education teacher; Homeless children; Individualized education program team; Intellectual disability; Limited English proficient; Long-term placement; National Instructional Materials Access Center (NIMAC); National Instructional Materials Accessibility Standard (NIMAS); Personally identifiable; Scientifically-based research; Serious bodily injury; Services plan; Special Education Hearing Officer; Timely manner; Universal design; and Ward of the state.</p> <p>Definitions for the following terms were modified to comply with federal requirements, in response to public comments, or to provide clarity: Age of eligibility; Alternate assessment; Assistive technology device; Autism; Change in placement; Change in placement for purposes of discipline; Child with a disability; Comprehensive Services Act; Consent; Developmental delay; Education record; Free appropriate public education; Functional Behavioral Assessment; Hearing impairment; Home tutoring; Impartial hearing officer; Implementation plan; Individualized education program; Initial placement; Interpreting services; Local educational agency (LEA); Orientation and mobility services; Orthopedic impairment; Other health impairment; Parent; Participating agency; Private school children with disabilities; Psychological services; Related services; School health services and school nurse services; Social work services in schools; Special education; Specific learning disability; Speech or language impairment; State-operated programs; Transition Services; and Vocational education.</p> <p>Definitions for the following terms were moved to this section from another section of the regulations: Controlled substance; Illegal drug; and Weapon.</p> <p>The following terms were deleted: Child study committee; Interpreting personnel; Itinerant; Qualified personnel; and Severe disability.</p>
30 Repealed	20 Functions of the Virginia Department of Education	Repealed	<p>To comply with federal requirements, provisions were included or modified which outline the VDOE's responsibilities to do the following:</p> <ul style="list-style-type: none"> • Ensure that all children with disabilities have a right to a FAPE, including, but not limited to children receiving special

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>education and related services, even though they have not failed or been retained in a course or grade, and are advancing from grade to grade;</p> <ul style="list-style-type: none"> • Ensure children with disabilities are included in all state-wide and division-wide assessments; • Ensure children with disabilities have available to them the variety of educational programs and services available to non-disabled children; • Comply with public participation guidelines in the development of policies and procedures; • Supervise educational programs; • Assist LEAs and participating state agencies to ensure state and federal requirements regarding “least restrictive environment” (LRE) are implemented; • Review and evaluate compliance of licensed private nonsectarian special education schools; • Establish a state special education advisory committee (SSEAC) that meets the membership requirements outlined in the federal special education regulations; • Establish goals for the performance of children with disabilities that promote the purposes of IDEA 2004 and are the same as Virginia’s objectives under the “No Child Left Behind Act” (NCLB), and address graduation and drop-out rates, including performance indicators to assess progress toward achieving these goals; • Establish and maintain qualifications to ensure that personnel, including paraprofessionals, are appropriately and adequately prepared and trained (including highly qualified provisions); • Respond to complaints filed by parents regarding staff qualifications; • Ensure compliance with the requirements of the McKinney-Vento Act as it impacts the provision of special education and related services to children with disabilities; • Report and certify annually to the United States Department of Education the number of children with disabilities receiving special education and related services on a date between October 1 and December 1 of each year, rather than before February 1 each year, as determined by the Superintendent of Public Instruction or Designee; • Ensure that a practical method is developed and implemented to determine if significant disproportionality based on race and ethnicity is occurring in LEAs, and if so, that VDOE takes the steps required by federal mandates; • Ensure LEAs are informed of responsibilities to effectively implement procedural safeguards for children with disabilities; • Ensure that if VDOE provides direct services to children with disabilities, it complies with state and federal requirements, as if it is a LEA; • Ensure a practical method is developed and implemented

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>to examine data to determine if significant discrepancies occur in the rate of long-term suspensions and expulsions for children with disabilities, and if so, that VDOE follows federal requirements;</p> <ul style="list-style-type: none"> • Adopt the NIMAS for providing instructional materials to blind persons or other persons with print disabilities; • Ensure that parents of children with disabilities are not required to obtain a prescription for a controlled substance on behalf of their child as a condition of the child attending school, or receiving an evaluation or special education and related services; and • Monitor, enforce, and provide technical assistance regarding the IDEA 2004, in accordance with the federal special education regulations. <p>In response to public comment, the provision outlining VDOE's responsibility to administer a special education due process system was revised to clarify VDOE's roles and responsibilities.</p> <p>In accordance with new federal requirements, the provision that VDOE develop and implement a comprehensive system of personnel development was deleted.</p> <p>The due date for the SSEAC's annual report to the Board of Education was modified from July 1st of each year to October 1st.</p> <p>To minimize the provisions that exceed federal requirements, the requirement that procedures be established to disseminate information from research, demonstration programs, and projects regarding children with disabilities was deleted.</p>
40 Repealed	30 Responsibilities of local school divisions and state-operated programs	Repealed	The provisions outlining which LEA is responsible for the provision of FAPE to a student were restructured to clarify existing areas of ambiguity. In addition, provisions were added to address emancipated minors, married minors, students with disabilities placed in sponsored residential homes; and residency disputes between LEAs, or between a parent and the LEA. A provision was also added indicating that children with disabilities are entitled to FAPE regardless of citizenship or immigration status. Finally, revisions were made to clarify that the LEA of residence remains responsible for the provision of FAPE in the least restrictive environment for students with disabilities who are placed long-term in a SOP for non-educational reasons.
45 Repealed	40 Special Education	Repealed	Provisions were added to require that special education teachers be "highly qualified," in accordance with the federal special education regulations.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
	Staffing Requirements		<p>For clarity:</p> <ul style="list-style-type: none"> • Cross-references to staffing requirements outlined in the Virginia Appropriations Act, the Standards of Quality, the Standards of Accreditation, and the Virginia Licensure Regulations for School Personnel were added, and subsection A.1. was modified to ensure better alignment with these state requirements; • A requirement was added that students with disabilities be instructed in general education settings and classroom, as appropriate, given their IEP; and • The provision regarding alternative special education staffing plans was modified to indicate that an alternative staffing plan may only be approved if the LEA is seeking to implement an innovative program with which normal staffing requirements are inconsistent. <p>To increase flexibility for local school divisions, programs for early childhood special education must provide a schedule comparable in length to school age students, if determined appropriate by the child's IEP team, rather than a 5 ½ hour day.</p> <p>To provide clarity and as a result of recent case law, the provisions regarding the qualifications for educational interpreting services have been modified to provide some flexibility regarding the credentials that an educational interpreter must obtain, while ensuring that children with disabilities are provided with quality interpreting services. The provisions which previously permitted waiver of the qualifications have been removed to comply with federal regulatory requirements, but a phase-in process for the new criteria has been included. In addition, a provision was inserted to clarify that the qualifications of an individual providing sign language services to a child who is not deaf or hard of hearing will be determined by the LEA.</p>
50 Repealed	50 Child find	Repealed	<p>To comply with federal requirements:</p> <ul style="list-style-type: none"> • "Wards of the State" must now be included in each LEA's child find program; • Each LEA's responsibilities for child find activities relative to parentally-placed private school students were expanded; • Screenings for instructional purposes are not considered an evaluation; and • VDOE prohibits State and LEA personnel from requiring parents of children with disabilities to obtain a prescription for a controlled substance on behalf of their child as a condition of the child attending school, or receiving an evaluation or special education and related services. However, LEA personnel may share classroom-based observations with the parents regarding a student's

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>performance, or need to be evaluated.</p> <p>In accordance with the <i>Code of Virginia</i> and the Board of Education regulations, children must be screened for scoliosis.</p> <p>To minimize state regulations that exceed the federal requirements, the following requirements were modified:</p> <ul style="list-style-type: none"> • Specific provisions which outlined how a LEA was required to conduct its annual public awareness campaign were replaced by a single provision which requires that each LEA have procedures to document its public awareness campaign; • The timelines associated with screenings, and the requirement that specific measures or instruments be used during screenings, were removed and replaced by a single provision which requires each school division to have screening procedures, which include timelines, to document that children are screened in accordance with the requirements of the <i>Code of Virginia</i> and other state regulations; and • The Child Study Committee requirements were removed, and replaced by a framework for a school-based structure for referrals, including timelines, required team members, and procedures for the referral process. The new provisions provide LEAs with greater flexibility to use scientific, response to intervention methods, while maintaining procedural protections for children suspected of having a disability.
52 Repealed	60 Referral for initial evaluation	Repealed	<p>To comply with federal requirements, the following provisions were added:</p> <ul style="list-style-type: none"> • A referral for an initial evaluation may be made by the VDOE or any state agency; • Evaluation requirements, identifying the information to be obtained and the comprehensive nature of the assessments; • Exceptions to the 65 business day timeline for the completion of an evaluation; and • New parental consent provisions for initial evaluations, including the LEA's options and responsibilities if a parent fails to provide, or refuses consent for an evaluation; that consent for an initial evaluation is not consent for initial services; reasonable efforts must be made to obtain parental consent; and that under certain circumstances, parental consent is not required for the initial evaluation of a ward of the state. <p>To increase flexibility for local school divisions and parents, the parent and the eligibility group may agree in writing to extend the 65 business day timeline to obtain additional data</p>

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			<p>for any eligibility determination.</p> <p>To minimize state regulations that exceed the federal requirements, while providing LEAs with greater flexibility to use scientific, response to intervention methods, and while maintaining procedural protections for children suspected of having a disability, the multiple requirements and timelines regarding Child Study Committees were deleted and provisions reflecting the new school-based structure for referrals were inserted.</p>
<p>54 Repealed</p>	<p>70 Evaluation and Reevaluation</p>	<p>Repealed</p>	<p>To comply with federal requirements, the following provisions were added:</p> <ul style="list-style-type: none"> • The team must review local or state assessments and classroom-based observations; • The team must determine what additional data is necessary to determine the child's educational needs, the present level of academic achievement and related developmental needs, and whether or not the child needs or continues to need special education and related services; • New requirements regarding the administration of an evaluation in the language and form most likely to yield accurate information; • A written copy of the evaluation report must be provided at no cost to the parent; • Assessments of a child with a disability, or who is suspected of having a disability, who transfers between LEAs in the same school year, must be coordinated by the LEAs to ensure prompt completion of the full evaluation; • A reevaluation must be completed if the LEA determines that the child's educational or related services needs warrant a reevaluation, and at least every three years, unless the parent and the LEA agree that an evaluation is unnecessary; • A LEA must not conduct a reevaluation more than once a year unless the LEA and parent agree otherwise; • The LEA's responsibilities regarding parental consent when administering an evaluation that is administered to all children, and when the parent of a child who is home-instructed, home-tutored, or parentally-placed in a private school refuses, or fails to respond to a request to provide consent to evaluate; • The term "test" was replaced with the term "assessment;" • Modifications were made to the requirements if additional data is not needed for an evaluation, including: <ul style="list-style-type: none"> ➤ A LEA must provide the parent with prior written notice (PWN) of the right for a parent to request an evaluation to determine the child's educational needs; and ➤ A LEA is not required to gather additional information unless the parent requests the evaluation for the purpose of determining if the child continues to have a disability or

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			<p>to determine the child's educational needs.</p> <p>For clarity:</p> <ul style="list-style-type: none"> • A provision was added, indicating that the parent may resolve a dispute regarding the LEA's refusal to do an evaluation, via mediation or due process procedures; • Where appropriate, provisions that apply to both evaluations and reevaluations were consolidated; and • A provision was inserted, noting that a LEA is not required to evaluate a child with a disability who graduates with a standard or advanced diploma, but the parent must receive PWN of the change in placement. <p>To minimize state regulations that exceed the federal requirements, the following requirements were deleted or modified:</p> <ul style="list-style-type: none"> • Requirements outlining who must be evaluated and the procedures that a LEA must use to complete the evaluation, as outlined in the previous regulations, at 8 VAC 20-80-54 A. through C., were replaced with the requirement that LEAs establish procedures for evaluations and reevaluations in compliance with federal regulatory requirements; • The provision allowing the group to conduct its review without a meeting was deleted; and • The requirement that a triennial evaluation be initiated no less than 65 business days prior to the third anniversary of the last date of eligibility was removed. Rather, a reevaluation process must be initiated in sufficient time to complete the process prior to the third anniversary of the date eligibility was last determined. <p>To increase flexibility for local school divisions and parents, the parent and the eligibility group may agree in writing to extend the 65 business day timeline to obtain additional data for any eligibility determination.</p> <p>In response to public comment, inserted a provision requiring that a written copy of the evaluation report(s) be provided to the parent(s) prior to or at the meeting where eligibility group reviews the evaluation report(s) or immediately following the meeting, but no later than 10 days after the meeting.</p>
56 Repealed	80 Eligibility	Repealed	<p>The timeline requirements previously outlined at 8 VAC 20-80-56 A.1. through A.3. were deleted from this section.</p> <p>To comply with federal requirements, the following provisions were added:</p> <ul style="list-style-type: none"> • In addition to determining whether or not a child is eligible for special education and related services, the eligibility group must determine the educational needs of the child;

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			<ul style="list-style-type: none"> • A child may not be determined eligible for special education and related services if the determinant factor is the lack of appropriate instruction in math or reading, including the essential components of reading instruction; • The requirements for determining a child eligible as a child with a specific learning disability; and • Parental consent must be obtained before personally identifiable information is released for children who are parentally placed in a private school outside their LEA of residence. <p>The following provisions are required by the federal regulations relative to eligibility determinations for specific learning disabilities, but have been applied to all eligibility determinations:</p> <ul style="list-style-type: none"> • Required eligibility group considerations; • Requirements for documenting the eligibility group's determination of eligibility; • New required members of the eligibility group; and • Requirements that as part of the eligibility process, the eligibility group ensure that a child is, or has been, observed in routine classroom instruction. <p>For clarity:</p> <ul style="list-style-type: none"> • A provision was added that a determination regarding eligibility must be made on an individual basis by the eligibility group; • The provisions regarding transfer students were deleted from this section, and inserted into new section 8 VAC 20-81-120; and • New eligibility criteria were added for all disability categories, and a requirement was inserted that LEAs use the new criteria as part of the determination of whether a child has a disability. <p>The ages of eligibility for "Developmental Delay" were changed from two through eight, inclusive, to two through six, inclusive. School divisions that have eliminated the upper age range for ages 7 and 8 report documented success in providing direct support to children who are at risk for academic or behavioral difficulty in the general education classroom. They have reduced the over identification of children, particularly for children of color and poverty, while at the same time placing more emphasis on timely interventions within their general education programs. Parents and school personnel still retain the right to request to initiate the evaluation-eligibility process of children suspected of having a disability. Some children, served under the DD category from ages two to six, inclusive, will continue eligibility for special education and related services and be more properly served in one of the other disability categories, such as</p>

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			<p>autism, other health impaired, or multiple disabilities.</p> <p>To provide LEAs with flexibility, if the eligibility group determines that there is not a change in eligibility and educational needs, the IEP team is not required to convene unless the parent requests it.</p>
58 Repealed	90 Termination of special education and related services	Repealed	<p>To comply with federal requirements, each LEA must complete a summary of academic achievement and functional performance when a child with a disability graduates with a standard or advanced diploma or reaches the age of 22.</p> <p>For clarity:</p> <ul style="list-style-type: none"> • A provision was added requiring the LEA to comply with PWN requirements prior to partial or complete termination of special education and related services; • Inserted a provision that although an evaluation must be completed prior to the complete termination of special education and related services, to terminate a related service, the IEP team may rely on current data in the child's education record, or complete an evaluation in accordance with 8 VAC 20-81-70. • Provisions outline the LEA's responsibilities for completing a summary of academic achievement and functional performance if a child with a disability exits school without graduating with a standard or advanced diploma or reaching the age of 22, and if the child returns to school after exiting.
60 Repealed	100 Free appropriate public education	Repealed	<p>To comply with federal requirements, the following provisions were added:</p> <ul style="list-style-type: none"> • FAPE must be provided to children with disabilities who need special education and related services, even if they have not failed or been retained in a course or grade, and even if they have received a general educational development (GED) credential; • VDOE has a goal of providing full educational opportunity to required children with disabilities by 2015; • LEAs are not obligated to provide FAPE to children with disabilities who are eligible under IDEA Part B, but who choose to receive early intervention services under IDEA Part C; • Provisions outlining each LEA's responsibilities regarding hearing aids, surgically implanted devices, supplementary aids and services, and physical education; and • Provisions outlining VDOE's responsibilities regarding the methods and payments for ensuring children with disabilities are provided with FAPE.

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			<p>To comply with federal regulatory requirements, the provisions outlining the LEA's responsibility for ensuring that a child with a disability may participate in physical education was modified.</p> <p>To comply with guidance from the U.S. Department of Education, or to align the state regulations with recent case law, provisions were added that outline each LEA's responsibilities regarding the provision of personal devices, the length of the commute of a child with a disability, extended school year services, and disability harassment.</p> <p>To minimize state regulations that exceed the federal requirements, LEAs are not required to establish a goal of providing a full educational opportunity to required children with disabilities.</p> <p>For clarity, inserted:</p> <ul style="list-style-type: none"> • Provisions that FAPE must be provided to children with disabilities who meet the age of eligibility requirements in 8 VAC 20-81-10, and to children with disabilities who reside within the school division but do not hold a valid U.S. citizenship or student visa; • A cross-reference to 8 VAC 20-81-130 A 2, which also references the LEA's responsibility to ensure that supplementary aids and services are provided, as determined appropriate and necessary by the IEP team, to provide children with disabilities an equal opportunity to participate in non academic and extracurricular activities; and • A requirement that the IEP team determines the length of the school day for preschool-aged children with disabilities.
62 Repealed	110 Individualized education program	Repealed	<p>To comply with federal requirements, the following provisions were added:</p> <ul style="list-style-type: none"> • The LEA's responsibilities to consolidate, to the extent possible, reevaluation and IEP team meetings; • The LEA's option to permit a child's IEP to be amended without convening an IEP meeting, if the parent and the LEA agree, including that the IEP team members must be informed of any modifications, the meeting does not substitute for the annual IEP review, and upon request of the parent, the LEA must provide a revised copy of the IEP with the amendments incorporated; • The IEP team must include not less than one regular education teacher of the child, and not less than one special education teacher of the child, rather than "at least one" of each; • The provision previously outlined in 8 VAC 20-80-62 C. 2. c., was replaced with a provision outlining the LEA's obligation to obtain parental consent, or the consent of a

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			<p>child who has reached the age of majority, and to invite a representative of any participating agency that is likely to be responsible for providing or paying for secondary transition services;</p> <ul style="list-style-type: none"> • A LEA must, at the request of the parent, invite the Part C coordinator or other representative of the Part C system to attend the initial IEP meeting to assist with the smooth transition of services, and the notice of the initial IEP meeting must inform the parent(s) of this right; • If the LEA complies with certain requirements, a required member of the IEP team may be excused from attending the IEP meeting, in whole or in part; • The distinction between the secondary transition services provided to children with disabilities at age 14, and at age 16 have been deleted, including the distinction in the IEP meeting notice requirements; • During the development, review, and revision of a child's IEP, the team must consider the academic, developmental, and functional needs of the child; however, the requirement that the results of the child's performance on any general state or division wide assessment program be considered was deleted; • Nothing requires the inclusion of information into a child's IEP beyond what is specifically required; • The content of a child's IEP must include, in part, the following: A statement of the child's present levels of academic achievement and functional performance; a statement of measurable annual goals, including academic and functional goals; for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives; a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child; a statement of any individual accommodations or modifications that are necessary to measure the child's academic and functional performance on a state and division-wide assessment, and if the IEP team determines that the student must take an alternate assessment, a statement, which includes federally-required elements; a statement of how the child's progress toward the annual goals will be measured and when the periodic reports on the progress the child is making will be provided; and required information regarding secondary transition, including appropriate measurable postsecondary goals based on age-appropriate transition assessments, and transition services, including courses of study, which are based on the child's needs, and consider the child's preferences and interests; • Deleted former provision 8 VAC 20-80-62 B. 9., which noted that a LEA, teacher, or other person is not required to

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			<p>be held accountable if a child does not achieve the growth projected in the annual goals, including benchmarks or objectives;</p> <ul style="list-style-type: none"> Deleted previous provision 8 VAC 20-80-62 F. 7. b.; and In the development of an IEP for a preschool-aged child with a disability, the IEP team must consider an IFSP that contains the IFSP content contained in Part C, and may incorporate those components in the child's IEP. <p>For consistency, the 30-day timeline which applies to the development of an IEP following the initial eligibility determination, also applies to the development of an IEP following a reevaluation and eligibility process, if the IEP team determines that changes are necessary. The provision previously at 8 VAC 20-80-62 B. 5. was deleted given the insertion of the above provision.</p> <p>To ensure the provision of FAPE to a child with a disability:</p> <ul style="list-style-type: none"> An IEP must be implemented as soon as possible following receipt of parental consent; and Transition services must be initiated for a student with a disability prior to the child entering secondary school but not later than the first IEP to be in effect when the child turns 14. Not later than the first IEP to be in effect when the child turns 16, the IEP must include, if appropriate, a statement of interagency responsibilities or any needed linkages. <p>In accordance with guidance from the U.S. Department of Education, the LEA determines the school personnel to fill the roles of the required IEP team members.</p> <p>For clarity, the following provisions were added:</p> <ul style="list-style-type: none"> If an LEA uses alternative means of ensuring parent participation in meetings, and if that results in additional costs, the LEA is responsible for those costs; The LEA shall have a record of attempts to arrange a mutually agreed on time and place such as copies of correspondence sent to the parent, including written, electronic, or facsimile; The LEA must give the parent(s) a copy of the child's IEP at the IEP meeting, or within a reasonable period of time after the IEP meeting, not to exceed 10 calendar days; An IEP team may determine that benchmarks or short-term objectives are required for any child with a disability if necessary for the child to benefit educationally; For a child pursuing a modified standard diploma, the IEP team must consider the child's need for occupational readiness upon school completion; and The provisions which were previously at 8 VAC 20-80-62 H. were restructured without making substantive changes.

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			<p>The following provisions were deleted:</p> <ul style="list-style-type: none"> • Former provision 8 VAC 20-80-62 C. 1. h., which exceeded the federal requirements. However, the child's caseworker may still attend IEP meetings at the discretion of the LEA, or someone meeting the definition of a "parent;" • To comply with applicable case law, from 8 VAC 20-80-62 F. 6., the statement, "Location refers to the continuum of alternative placements in 8 VAC 20-80-64 B.;" and • Former provision 8 VAC 20-80-62 F. 5. f., regarding the Literacy Passport Test, as it is no longer applicable. <p>In response to public comment:</p> <ul style="list-style-type: none"> • Inserted provisions requiring that each child's IEP team consider the child's needs for benchmarks or short-term objectives, even if child is not participating in the Virginia Alternate Assessment Program. That consideration must be documented; • Inserted a requirement that progress reports must be provided at least as often as parents are informed of the progress of their children without disabilities; • Inserted a requirement that at least one year before a student reaches the age of majority, the student's IEP must include a statement that both the student and the parent(s) have been informed regarding the transfer of rights; and • Expanded the provisions regarding allowing a parent to audiotape or videotape a meeting, distinguishing between the parent's right to audiotape an Eligibility, IEP or Manifestation Determination Review meeting, and the LEA's option to have policies, if certain criteria are met, that prohibit, limit, or otherwise regulate the use of video recording devices at meetings convened under the special education regulations, or audio or video recording devices at meetings other than Eligibility, IEP or Manifestation Determination Review meetings. Given the expanded language in these provisions, they were moved to the new 8 VAC 20-81-170.
N/A	120 Transfer students		<p>For clarity, these provisions, which were previously included as part of 8 VAC 20-80-56, have been moved to their own section. To comply with federal regulatory requirements, the new LEA must take reasonable steps to obtain the child's records from the previous LEA in which the child was enrolled, and the previous LEA must take reasonable steps to respond to the request from the new LEA.</p> <p>For clarity, the following provisions have been included:</p> <ul style="list-style-type: none"> • If an LEA is not forthcoming in the provision of a child's educational records, VDOE may be contacted for assistance; • If the new LEA is unable to obtain the IEP from the previous

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			<p>LEA or the parent, the new LEA is not required to provide the student with special education and related services. Rather, the student may be placed in a general education setting, pending an evaluation, if an evaluation is necessary;</p> <ul style="list-style-type: none"> • The LEA may develop and implement an interim IEP while obtaining and reviewing the information needed to develop a new IEP; • If there is a dispute between the new LEA and the parent regarding interim services or a new IEP, the LEA must provide FAPE to the child in consultation with the parents(s), including services comparable to those described in the child's IEP from the previous LEA; • If the LEA determines that an evaluation is necessary, the LEA must comply with the requirements for notice, to initiate and conduct an evaluation, determine eligibility, and develop an IEP; and • To comply with the requirements of the Comprehensive Services Act (CSA), provisions were added which outline each LEA's responsibilities if a child with a disability is placed in a private residential school under CSA, and then transfers. These provisions include a 30 day transition period during which the former CSA team is responsible for funding services, and the new LEA must review and revise, if necessary, and implement a new IEP.
<p>64 Repealed</p>	<p>130 Least restrictive environment and placements</p>	<p>Repealed</p>	<p>To comply with federal requirements:</p> <ul style="list-style-type: none"> • Children with disabilities must participate with children without disabilities to the maximum extent appropriate, including in the provision of nonacademic and extracurricular services and activities; • LEAs must ensure that each child with a disability has the supplementary aids and services determined appropriate and necessary by the child's IEP team to participate in nonacademic settings. A cross-reference to 8 VAC 20-81-100 H. was inserted; and • Language was amended to note that benchmarks and short-term objectives are no longer required for all children with disabilities. <p>Modified 8 VAC 20-80-64 B. 2. b. to require, versus recommend, that a continuum include "integrated service delivery."</p> <p>For clarity:</p> <ul style="list-style-type: none"> • Added language to emphasize that the LRE provisions apply to children with disabilities, aged two to 21;
<p>65 Repealed</p>	<p>140 Placement of children at the</p>	<p>Repealed</p>	<p>To increase flexibility for school divisions and the Virginia School for the Deaf and Blind at Staunton (VSDB-S), deleted the requirement that school divisions and VSDB-S develop</p>

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	Virginia schools		contractual agreements to ensure compliance with the federal and state special education requirements. However, retained the provisions that outline responsibility for the transportation of students with a disability to and from VSDB-S.
66 Repealed	150 Private School Placement	Repealed	<p>To comply with federal requirements, the previous reference to “residential placement” in 8 VAC 20-80-66 A. 1., was modified to reference “a private school or facility.”</p> <p>The federal language modified each LEA’s responsibilities regarding children with disabilities who are parentally-placed in private schools, and the state provisions were rewritten to ensure compliance. Most significantly, a LEA is no longer responsible for those children who are residents of the LEA, and who are parentally-placed in private schools. Rather, LEAs are responsible for those children who are parentally-placed in private schools, which are physically located within the LEA. Additional federal changes to each LEA’s responsibilities regarding parentally-placed private school children with disabilities include the following:</p> <ul style="list-style-type: none"> • An expansion of the LEA’s child find responsibilities, including ensuring that comparable activities to those for public school students are undertaken, that LEA staff meet with representatives of private schools to determine how to conduct a thorough and complete child find process, and that the child find process ensure the equitable participation of parentally-placed private school children, and an accurate count of that population of students; • If a LEA has not expended all of its proportionate share amount for equitable services by the end of the fiscal year for which Congress appropriates the funds, the LEA must carry the funds over for an additional year; • LEAs may supplement, but not supplant, the proportionate share amount of federal funds for the provision of equitable services; • In calculating the proportionate share amount, LEAs must engage in timely and meaningful consultation with private school representatives prior to completing child find responsibilities to determine the number of parentally-placed private school children attending private schools within the LEA; • The child count must be conducted on a date between October 1 and December 1 of each year, rather than before February 1 each year, as determined by the Superintendent of Public Instruction or Designee; • There has been an expansion of the requirements regarding the LEA’s responsibility to consult with private school representatives to include five different elements, including how, where, and by whom special education and related services will be provided for parentally-placed

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			<p>private school students, and the types of services to be provided. If the LEA disagrees with the private school representatives regarding the provision of services or the types of services, the LEA must provide them with a written explanation of the LEA's reasoning;</p> <ul style="list-style-type: none"> • Following consultation, the LEA must obtain a written affirmation from the private school representatives; • Under certain circumstances, private school representatives may file a complaint to VDOE against the LEA, and if the complainant is dissatisfied with VDOE's decision, the decision may be appealed to the U.S. Department of Education; • The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in public school, except that the requirements regarding highly qualified special education teachers do not apply; • Services may be provided by LEA employees, or through contract with the LEA; • Special education and related services provided to parentally placed private school children with disabilities, must be secular, neutral, and nonideological; • The dispute resolution options available to parentally placed private school children apply to the LEA where the private school is located; and • Each LEA must maintain for its records, and provide to VDOE, certain data regarding parentally-placed private school children. <p>For clarity, and to comply with federal requirements, the federal definition of the terms "elementary school" and "secondary school" were added. A new definition of the term "private school," was also included, outlining applicable federal and state requirements.</p>
68 Repealed	160 Discipline procedures	Repealed	<p>The section was revised to comply with federal requirements, including the addition or modification of the following provisions:</p> <ul style="list-style-type: none"> • School personnel may consider any unique circumstances on a case-by-case basis when deciding whether or not to change the placement of a child with a disability who violates the code of conduct; • A short-term removal is up to 10 consecutive school days, or 10 cumulative days in a school year; • A child with a disability may be removed from their current educational placement to another setting for disciplinary reasons to the extent that the alternatives are applied to children without disabilities; • The LEA's responsibilities for providing services to a child with a disability during a short-term removal, including the

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			<p>LEA's responsibilities to ensure that beginning on the 11th day of removal, the student is provided with services to enable the student to continue to participate (not necessarily progress) in the general education curriculum, progress toward meeting the student's IEP goals, and be included in VDOE and division wide assessment programs;</p> <ul style="list-style-type: none"> • The process by which a LEA determines if a series of removals constitute a pattern of removal was modified to indicate that if the child's behavior was substantially similar to behavior in previous incidents, a pattern may exist; however, the determination is made by the LEA on a case-by-case basis; • Under special circumstances, a LEA may remove a child with a disability to an appropriate interim alternative education setting (IAES) for up to 45 school days (rather than calendar days) regardless of whether the behavior is a manifestation of the child's disability. Special circumstances now include if the child inflicts serious bodily injury while at school or at a school function; • The LEA's responsibilities for providing services to a child with a disability during a long-term removal, including the LEA's responsibilities to ensure that the student is provided with services to enable the student to continue to participate (not necessarily progress) in the general education curriculum, progress toward meeting the student's IEP goals, be included in VDOE and division wide assessment programs, and receives, as appropriate, a functional behavioral assessment (FBA), and a behavioral intervention plan (BIP) to address the behavior violation so that it does not recur; • Deleted the requirement that the LEA automatically conduct a FBA and the IEP team meet to develop a BIP, if it has not already done so, no later than 10 business days after first removing a student for more than 10 school days in a school year, or commencing a long-term removal. Rather, a BIP must be developed, at a minimum when a student's behavior interferes with his learning or that of others, or if the IEP team determines that the child's behavior is a manifestation of his disability and a FBA or BIP have not already been completed; • Deleted the provisions, which previously appeared in 8 VAC 20-80-68 C. 4. b., regarding determining that maintaining a child with a disability in the current placement is substantially likely to result in injury to the student or others, except that if an LEA believes that maintaining the student in the current educational placement is substantially likely to result in injury to the child or others, the LEA may request a due process hearing, and a Special Education Hearing Officer may order a change in placement to an IAES for not more than 45 school days; • A manifestation determination decision must be made by

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			<p>the LEA, the parent(s), and the relevant members of the IEP team, rather than by “the IEP team and other qualified personnel;” therefore, the definition of “other qualified personnel” was also deleted;</p> <ul style="list-style-type: none"> • The provisions, which previously appeared at 8 VAC 20-80-68 C. 5. (2), were replaced with the new federal requirements for determining whether or not a child’s behavior is a manifestation of his disability, including the LEA’s responsibilities if the child’s behavior is or is not a manifestation of his disability; • Deleted the previous provision at 8 VAC 20-80-68 C. 6. b.; • Added provisions regarding the applicable timelines for an expedited due process hearing, including 20 school days to complete a hearing from the date the request for the hearing is filed, 10 school days following the hearing to issue a determination, and 7 calendar days to convene a resolution session, unless waived; • A Special Education Hearing Officer may return the child with a disability to the placement from which the child was removed if the Special Education Hearing Officer determines that the removal was a violation of the federal requirements or the child’s behavior was not a manifestation of the child’s disability; • The provisions which previously outlined a child’s placement during an appeal, and which included a child’s right to “stay put” in the current educational placement during an appeal were deleted. Instead, a child with a disability must remain in the IAES pending the decision of the Special Education Hearing Officer or until the expiration of the time for the disciplinary placement; • Deleted the provision which previously permitted the “behavior or performance of the student” to trigger protections for a student not yet eligible for special education and related services; • A LEA must be deemed to have knowledge that a child is a child with a disability before the behavior that precipitated the disciplinary action occurred, a teacher of the child or school personnel expressed concern about a pattern of behavior demonstrated by the child directly to the director of special education of the LEA or to other supervisory personnel of the LEA; • A LEA is not deemed to have knowledge that a child is a child with a disability if the parent has not allowed a previous evaluation of the child, has refused services for the child, or the child has been evaluated and determined ineligible; • Previous provisions from 8 VAC 20-80-68 C. 9. were deleted; and • The LEA is required to include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child,

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			<p>transmit the statement to the VDOE upon request to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled students, and include the statement in the child's educational records, and with the child's IEP, when the child transfers from one school to another. Provisions which outline the content of the statement were also added.</p> <p>For clarity, the definitions of the following terms were included in 8 VAC 20-81-10: Weapon, Controlled substance, Illegal drug, and Serious bodily injury.</p> <p>In response to public comment, inserted additional language regarding FBAs and BIPs, to clarify that when a child's behavior impedes his learning or that of others, the IEP must consider the use of positive behavioral interventions, strategies and supports to address the behavior. Also inserted provisions requiring the IEP team to consider developing goals and services to address the child's behavioral needs; or conducting a FBA and determining the need for a BIP. In addition, included language emphasizing that if a FBA is an evaluation, then the parents are entitled to receive an independent educational evaluation, if they disagree with the evaluation.</p>
70 Repealed	170 Procedural safeguards	Repealed	<p>To comply with federal requirements:</p> <ul style="list-style-type: none"> • In the case of a child with a disability who is transitioning from Part C to Part B services, the parent must be informed that an invitation to the initial IEP meeting must, at the parent's request, be sent to the Part C service coordinator or other representative to assist with a smooth transition; • To ensure parent involvement in placement decisions, parents must be provided with meeting notice meeting all requirements outlined in 8 VAC 20-81-110 E.; • The LEA must take whatever action is necessary to ensure that the parent understands and is able to participate in group discussions regarding the child's educational placement; • A child's placement in an IAES placement is an exception to the requirement that IEP teams determine a child's placement; • A parent is entitled to only one independent education evaluation (IEE) at public expense each time the LEA conducts an evaluation component with which the parent disagrees; • If a parent obtains an IEE at public expense or shares with the LEA an evaluation obtained at private expense, the evaluation results must be considered by the LEA, if it meets LEA criteria, in decisions regarding FAPE, and it may be presented by either party in a due process hearing; • If a Special Education Hearing Officer requests an IEE as

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>part of a due process hearing, it must be at public expense;</p> <ul style="list-style-type: none"> • The provision stating that the LEA may provide PWN at the same time that it requests parental consent was deleted; • The events which trigger the requirement to provide a copy of the procedural safeguards document (PSD) were modified, and it was indicated that posting of a LEA's PSD on its Web site does not satisfy the requirement to provide the PSD, as required; • The required content of the PSD was modified; • The parental consent provisions were modified, including the following: <ul style="list-style-type: none"> ➤ Consent is required prior to accessing a child's public benefits or insurance; ➤ Consent is required before inviting to an IEP meeting the representative of an agency that may be providing or paying for secondary transition services; ➤ Consent is not required prior to administering a screening to determine appropriate instructional strategies; ➤ Under certain circumstances, consent is not required before conducting an initial evaluation for a ward of the state; ➤ A LEA may, but is not required to, use mediation or due process if the parent fails to respond to a request for consent for an initial evaluation, or to override a parent's refusal to consent for an initial evaluation or reevaluation; ➤ If a parent refuses consent, or fails to respond to a request for consent, for the initial provision of special education and related services, the LEA may not use mediation or due process to obtain consent. However, the LEA's failure to provide the special education and related services is not considered a denial of FAPE, and the LEA is not required to convene an IEP meeting or develop an IEP; ➤ If a parent of a parentally-placed private school child refuses consent for an initial evaluation or reevaluation, the LEA may not use mediation or due process to secure consent; however, the child will not be considered eligible for equitable services; ➤ Consent for initial evaluation may not be construed as consent for the initial provision of special education and related services; and ➤ The LEA must make reasonable efforts to obtain informed parental consent for an initial evaluation and the initial provision of special education and related services. • LEAs using private insurance or public insurance and benefits to pay for services required for the provision of FAPE must provide the parent with notice and obtain parental consent as outlined in 8 VAC 20-81-300; • An LEA must comply with a parent's request to inspect and review their child's educational records before a resolution session is convened in accordance with 8 VAC 20-81-210;

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<ul style="list-style-type: none"> • Modifications were made to the provisions outlining when parental consent is required prior to the disclosure of personally identifiable information, including that consent is required before personally identifiable information is shared between the LEA where a student resides and a LEA where the student is parentally-placed in a private school; • An LEA must provide the parent a copy of the child's IEP at no cost; and • If a LEA makes the option available, parents of a child with a disability may elect to receive PWN, the PSD, and notice of a request for due process by electronic mail. <p>In accordance with guidance from the U.S. Department of Education and the provisions of the <i>Code of Virginia</i>, if an electronic document contains an electronic signature, the electronic signature has the legal effect and enforceability of an original signature. A definition of electronic signature is included.</p> <p>Many of the requirements outlined in the previous provisions at 8 VAC 20-80-70 F. were deleted from this section and consolidated into the new 8 VAC 20-81-300.</p> <p>For clarity:</p> <ul style="list-style-type: none"> • Expanded the provision permitting a hearing to be held to challenge in a child's education records; and • Inserted into this section provisions that were previously included in 8 VAC 20-80 62 D. 6. regarding allowing a parent to audiotape or videotape a meeting. These provisions were expanded to grant parents the right to audiotape an Eligibility, IEP or Manifestation Determination Review meeting, and to provide LEA's the option to have policies that prohibit, limit, or otherwise regulate the use of video recording devices at meetings, or audio or video recording devices at meetings other than Eligibility, IEP or Manifestation Determination Review meetings. <p>In response to public comment:</p> <ul style="list-style-type: none"> • Inserted a provision requiring LEAs to have a record of attempts to arrange a mutually agreed on time and place such as copies of correspondence sent to the parent, including written, electronic, or facsimile; • Inserted a requirement that a LEA may presume a parent has the authority to inspect and review a child's education records unless provided a copy of a judicial order or decree, or other legally-binding documentation; and • Clarified that LEAs must ensure that electronic communications regarding any matter associated with the child be part of the child's education record.
72	180	Repealed	To comply with modifications to the Virginia Code, previous

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
Repealed	Transfer of rights to students who reach the age of majority		<p>provision 8 VAC 20-80-72 C. 4. was revised to indicate that an adult student will not be considered competent if admitted to a facility for the training, treatment, and habilitation of persons with mental retardation, and to delete the section of that provision which stated that an adult student will not be considered competent if in a coma and eligible for admission to a state hospital.</p> <p>In response to public comments, inserted a requirement that at least one year before a student reaches the age of majority, the student's IEP must include a statement that both the student and the parent(s) have been informed regarding the transfer of rights</p>
74 Repealed	190 Mediation	Repealed	<p>To comply with federal requirements:</p> <ul style="list-style-type: none"> • Mediation is available to resolve any matter arising under Part B of IDEA at any time a joint resolution is made to VDOE by the LEA and the parent, including matters arising prior to the filing of a state complaint or request for due process; • VDOE and the LEA may establish procedures to offer parents and schools that choose not to use the mediation process, an opportunity to meet with a disinterested party who would explain the benefits of, and encourage the use of, mediation. • Qualified mediators must be trained in effective mediation techniques; and • If an agreement is reached, the mediation process must conclude with a written, legally binding agreement that includes required elements. <p>To assist in complying with federal requirements, the following provisions were added:</p> <ul style="list-style-type: none"> • Parties to the mediation process may be required to sign a consent form to mediate containing a confidentiality pledge; and • Mediators must not have relationships or contracts with schools or parents outside of mediations assigned by VDOE.
76 Repealed	210 Due process hearing	Repealed	<p>To comply with federal requirements, numerous provisions were added, including the following:</p> <ul style="list-style-type: none"> • Timelines for filing a request for a due process hearing; • The LEA's authority to use due process to obtain parental consent; • The LEA's authority to request an expedited due process hearing; • Sufficiency of a due process notice, including the procedures to challenge the sufficiency of the notice, the procedures to amend the notice, and the implications if the notice is insufficient or fails to raise an issue, including that a hearing on the issue(s) may be delayed or denied;

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<ul style="list-style-type: none"> • The LEA's responsibility to document reasonable efforts to obtain parental participation in the resolution meeting; • A copy of the PSD must be provided by a LEA upon receipt of the parent's first request for a due process hearing in a school year; • The qualifications of the Special Education Hearing Officer; • The LEA's responsibilities when a dispute arises during the transition of a child with a disability from Part B to Part C; • An expedited hearing must be completed within 20 school days, and a written decision must be issued within 10 school days following the hearing; • A Special Education Hearing Officer's decision must be made on substantive grounds of whether or not the child received FAPE, and procedural inadequacies may not lead to a decision that FAPE was not provided unless certain requirements are met; • The procedures for convening, and the timelines applicable to resolution sessions, including provisions regarding written settlement agreements; • Each hearing involving oral arguments must be conducted at a time and place that is reasonably convenient to the parent(s) and the child involved; • A parent is entitled to an IEE at public expense if the parent disagrees with the evaluation completed in response to an order by the Special Education Hearing Officer; and • The timelines for appealing a due process decision to state or federal court. <p>In compliance with the <i>Code of Virginia</i>, an oath must be administered to witnesses testifying at a due process hearing and all witnesses testify under oath or affirmation.</p> <p>To ensure clarity and compliance with the federal requirements, the provisions previously outlined in 8 VAC 20-80-76 J.19. and K.13. were modified, and J.20. and K.12. were deleted.</p> <p>To ensure compliance with federal due process timelines, the procedures for objecting to the appointment of a Special Education Hearing Officer were expanded, and the instances in which an extension to the timelines could be granted, were limited.</p> <p>To ensure the effective and efficient operation of the due process system, the following provisions were added or modified:</p> <ul style="list-style-type: none"> • The request for a hearing must be made in writing to VDOE, with a copy of the request delivered contemporaneously by the requesting party to the other party; • If a request for a due process hearing is received solely by

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>VDOE, VDOE will immediately notify the LEA, and forward a copy of the request as soon as reasonably possible, rather than within one day, as previously required;</p> <ul style="list-style-type: none"> • Requirements for the duration of the Special Education Hearing Officer's authority were added; • All disclosures must be made and received by the Special Education Hearing Officer at least five business days prior to a hearing for expedited hearings, where previously a two business day timeline had applied; • A Special Education Hearing Officer now has five business days from the date of agreeing to serve for an expedited hearing, to complete the tasks that were previously required to be completed within two business days of the appointment; and five, rather than two, business days to document any changes in hearing dates and send information to all parties and VDOE; • The responsibilities of the Special Education Hearing Officer regarding conducting a pre-hearing conference were modified to include the Special Education Hearing Officer's responsibility to determine the scope of the conference, to document, if applicable, the reasons for not conducting a pre-hearing conference, and the pre-hearing determinations; • The Special Education Hearing Officer has the discretion to permit either party to raise an issue during the hearing which was not included in the notice by the moving party, depending on the circumstances. (Federal requirements limited this option only to those issues raised by the LEA.); • A Special Education Hearing Officer may not require parties to submit briefs as a condition of rendering a decision, but the Special Education Hearing Officer may permit such a submission on the parties' request; • The required elements of a due process decision were modified; • A Special Education Hearing Officer must issue a ruling in writing on any party's motion to quash or modify a subpoena, with a copy to all parties and VDOE; • The circumstances under which an extension to due process hearing timelines may be granted, and the procedures for granting such extensions; • VDOE must ensure that noncompliance findings are corrected not more than one year from identification, and LEAs must, on request, provide VDOE with documentation that the area(s) have been corrected; • The hearing officer has the discretion to hear disputes arising under IDEA and Section 504 as part of the same hearing process, if both are raised in the due process notice; • Findings of fact and decisions must be provided in writing to the parties and their attorneys, and not just to the attorneys, as previously required; and

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<ul style="list-style-type: none"> The provisions regarding implementation plans were modified to require an implementation plan only for fully adjudicated decisions, rather than for any decision of the hearing officer involving the dismissal of a case or withdrawal of the due process request. <p>To provide clarity:</p> <ul style="list-style-type: none"> Several provisions were collapsed, including the deletion of the provisions, which previously appeared at I.3.-I.5. were deleted; Language was clarified regarding the role of the Supreme Court of Virginia versus the role of VDOE in the administration of the impartial special education due process system, including that VDOE uses the list of hearing officers maintained by the Office of the Executive Secretary of the Supreme Court of Virginia and its Rules of Administration; Inserted the requirement that even if the applicable appeal period has expired, the record of the hearing and the findings of fact and decision must be provided to the parent(s) at no cost; Indicated that the resolution period is part of, and not separate from, the expedited due process hearing timeline; Required that parties may enter into a confidentiality agreement as part of their resolution agreement; Outlined that VDOE will establish procedures for the following: Providing Special Education Hearing Officers specialized training; establishing the number of Special Education Hearing Officers who shall be certified to hear special education due process cases; and the process for evaluation, continued eligibility and disqualification requirements of Special Education Hearing Officers. Provisions regarding the certification of hearing officers were inserted based on guidance from the Office of the Attorney General.
78 Repealed	200 Complaint resolution procedures	Repealed	<p>To comply with federal requirements, the following provisions were added:</p> <ul style="list-style-type: none"> New content requirements for a complaint, including contact information for the complainant, child-specific information, and a proposed resolution to the extent known; A complaint must address an action that occurred not more than one year prior to the date the complaint is received, and can no longer include complaint allegations for a longer period of time, even if the violation is continuing; The complaint must be simultaneously filed with VDOE and the LEA; VDOE's complaint notification to the LEA must include notice that the LEA has the opportunity to propose a resolution, and the parties have the opportunity to engage voluntarily in mediation;

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<ul style="list-style-type: none"> • VDOE must conduct an investigation which includes a complete review of all relevant documentation; and • The 60 calendar day timeline for a complaint investigation may be extended if the parties agree to the extension to engage in mediation. <p>To ensure compliance with the new federal requirements regarding sufficiency of the complaint, a provision was added outlining VDOE's procedure if a complaint is insufficient.</p> <p>The requirement that VDOE send written notification of its receipt of a complaint to "other appropriate [VDOE] personnel" was deleted.</p> <p>For clarity, the following provisions were added:</p> <ul style="list-style-type: none"> • The LEA's responsibility to respond after receiving notification of a complaint was added; • VDOE's procedure if a complaint is filed by an individual other than the child's parent(s) or their legal counsel; • VDOE will notify the parties in writing if the timeline for the complaint is extended; and • Parties to a complaint may appeal the complaint findings within 30 calendar days of the issuance of a decision, in accordance with procedures established by VDOE. <p>For clarity, current provisions 8 VAC 20-80-78 D. through G. were reordered to mirror the complaint process, and provision 8 VAC 20-80-78 F. was modified to clarify that the withdrawal of state and federal funds for special education may occur if a LEA fails to comply with applicable laws and regulations, but only following reasonable notice, and an opportunity for a hearing by the Board of Education.</p> <p>Given other modifications in the section, the language previously located in 8 VAC 20-80-78 C.3.a. and C.3.b. was deleted.</p>
80 Repealed	220 Surrogate parent procedures	Repealed	<p>To comply with federal requirements, the following provisions were added:</p> <ul style="list-style-type: none"> • Under certain circumstances, a judge may appoint a surrogate parent for a child who is a ward of the state; • A surrogate parent must be appointed within 30 calendar days of a determination that a surrogate is necessary; • A surrogate parent may not be an employee of a LEA; and • A temporary surrogate, who is a staff member of an emergency shelter, transition shelter, independent living program, or street outreach program, may be appointed to an unaccompanied homeless youth, even though the surrogate is employed by an agency involved in the education or care of the child, if the surrogate otherwise meets the qualifications to be a surrogate parent.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>To comply with federal requirements, a LEA must appoint a surrogate parent for a child who is a ward of the state, or who is an unaccompanied homeless youth. However, language was inserted to clarify that the appointment of a surrogate in these circumstances, is only required if no parent can be identified, or the parent's whereabouts are unknown.</p> <p>Based on guidance from US DOE, former provision 8 VAC 20-80-80 C 2 c was deleted.</p> <p>To minimize state regulations that exceed the federal requirements:</p> <ul style="list-style-type: none"> • LEAs are no longer required to notify the custodial state agency charged with the responsibility for a child when a surrogate parent is appointed; • The requirement that a surrogate parent reside in the same general geographic area as the child was deleted; and • The training requirements previously outlined in 8 VAC 20-80-80 D. 1. b. have been modified to indicate that a surrogate parent must have knowledge and skills to ensure adequate representation of the child. Surrogate parents are no longer required to complete a LEA approved training session prior to representing the child or to attend annual training thereafter. <p>For clarity, language was revised to note:</p> <ul style="list-style-type: none"> • Any individual meeting the definition of "parent" may allow a relative or private individual to act as a "parent;" and • Each LEA must establish their policies and procedures relative to surrogate parents in accordance with Virginia's special education regulations.
90 Repealed	230 Local educational agency administration and governance	Repealed	<p>To comply with federal requirements, provisions were added which indicate:</p> <ul style="list-style-type: none"> • A public noneducational agency may not disqualify an eligible service for Medicaid reimbursement because that service was provided in a school context; • A timeline for the LEA's participation in a transition planning conference for a student transitioning from Part C to Part B; • New LEA responsibilities regarding migratory children and early intervening services; and • The LEA's responsibilities to ensure that children with disabilities who need instructional materials in accessible formats are provided those materials in a timely manner. These new provisions outline the LEA's option to coordinate with the NIMAC. <p>The requirements regarding the LEA's submission of an annual plan were revised to clarify the LEA's responsibility. Also, in accordance with federal modifications, LEAs are no</p>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>longer required to submit copies of their policies and procedures, or the revisions of those policies and procedures to VDOE for approval; and LEAs are no longer required to develop and implement a comprehensive system of personnel development.</p> <p>The requirements regarding the local advisory committee (LAC) were modified:</p> <ul style="list-style-type: none"> • To indicate that a majority of the committee must be parents of children with disabilities or individuals with disabilities; • To require that the committee include one teacher with any addition LEA personnel serving only serve as consultants; and • To clarify the role of the LAC, including in the review of the school division's annual plan. <p>For clarification, a provision was inserted which outlines a LEA's responsibility for providing special education and related services to a child with a disability whose second birthday falls on or before September 30th.</p>
100 Repealed	240 Eligibility for funding	Repealed	In compliance with federal requirements, LEAs are no longer required to submit copies of their policies and procedures, or the revision of those policies and procedures to VDOE for approval.
110 Repealed	250 State funds for local school divisions	Repealed	<p>To comply with federal requirements, no state funding mechanism will result in placements that deny children with disabilities their right to be provided FAPE in the least restrictive environment.</p> <p>To ensure compliance with the <i>Code of Virginia</i>, provisions were expanded that outline VDOE's obligation to reimburse LEAs for the education of children with disabilities who are not residents, but who are in the LEA as a result of a placement in foster care, a group home, or an orphanage or children's home.</p> <p>The language regarding transportation which previously appeared at 8 VAC 20-80-110 B. 3., was deleted to comply with other regulations of the Virginia Board of Education.</p> <p>The provisions regarding the reimbursement for children participating in public regional special education programs was modified to provide the Superintendent of Public Instruction or designee with greater flexibility.</p>
120 Repealed	260 Federal funds	Repealed	<p>To comply with federal requirements:</p> <ul style="list-style-type: none"> • Provisions were added which outline the LEA's responsibilities regarding the following: Excess costs;

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			<p>Maintenance of effort; and Early intervening services, including their relationship to a determination by VDOE that significant disproportionality based on race and ethnicity is occurring within the LEA in the identification of children with disabilities;</p> <ul style="list-style-type: none"> • Part B funds may be used to supplement, but not supplant state and local expenditures for special education and related services; and • The language, which previously permitted the awarding of “sliver grants,” was deleted.
130 Repealed	270 Funds to assist state-operated programs	Repealed	For clarity, a provision was added to indicate that state funds for the education of children with disabilities in regional and local jails are appropriated to VDOE for distribution.
140 Repealed	280 Funding, withholding, and recovery of funds	Repealed	<p>To comply with the <i>Code of Virginia</i>, a provision was added which outlines that if the LEA fails to comply with the regulations established by the Virginia Board of Education, the Board may withhold the LEA's state and federal funds for the education of children with disabilities, and use those funds to ensure the provision of special education and related services to such children.</p> <p>To comply with federal requirements, if a LEA is notified in writing by VDOE of a decision to withhold funds, the LEA must provide public notice to its jurisdiction regarding the pendency of the action.</p> <p>For clarity, provision 8 VAC 20-80-140 C. was modified to clarify that the withdrawal of state and federal funds for special education may occur if a LEA fails to comply with applicable laws and regulations, but only following reasonable notice, and an opportunity for a hearing by the Board of Education.</p>
150 Repealed	290 Appeal of administrative decision regarding funding	Repealed	<p>To comply with federal requirements, a LEA must appeal within 20 days of a decision made during an administrative hearing for VDOE to withhold its funding.</p> <p>To minimize state regulations that exceed the federal requirements, language regarding the rates set for the regional special education programs was deleted.</p>
152 Repealed	300 Use of public and private insurance	Repealed	To comply with federal requirements, the section was modified to indicate that like with private insurance, if a LEA is seeking to access a child's public benefits or insurance to provide the child with services required for FAPE, the LEA must obtain informed parental consent each time that access to the child's public benefits or insurance is sought, and provide the parent with notice containing specific elements, including that the parent's refusal to allow access does not

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			relieve the LEA of its responsibility to provide FAPE to the child at no cost.
155 Repealed	310 Attorneys' fees	Repealed	To comply with federal requirements, provisions were added which outline who may be awarded reasonable attorneys' fees, and that attorneys' fees may not be awarded relative to a resolution session.
160 Repealed	320 Additional responsibilities for programs with children with disabilities in residence or custody	Repealed	To comply with federal requirements, the requirement for state-operated programs to develop a comprehensive system of personnel development was deleted, and requirements to ensure that personnel are appropriately and adequately prepared and trained, including requirements for paraprofessionals, were added.
190 Repealed	330 Compliance with § 504 of the Rehabilitation Act of 1973, as amended	Repealed	To ensure compliance with Section 504 of the Rehabilitation Act of 1973, as amended, LEAs are required to adopt grievance procedures that incorporate due process standards and provide for the resolution of complaints. For clarity, provisions were added indicating that if the LEA uses due process procedures to resolve complaints, the LEA is responsible for 100 percent of the reimbursement costs; and VDOE trains Special Education Hearing Officers on the requirements of Section 504.
190 Repealed	340 Special Education Caseload Staffing Requirements	Repealed	Deleted references to "Severe Disabilities."

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

During the development of the proposed regulations, VDOE has made efforts to minimize the number of rules, regulations, and policies to which the local educational agencies are subject, while still ensuring compliance with the IDEA 2004, its federal implementing regulations, and other laws and regulations that impact the provision of special education to students with disabilities in Virginia.

Small businesses will not be impacted by these regulations.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed revisions to the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* are not anticipated to have an impact on the institution of the family or on family stability. However, parental involvement continues to be a fundamental component of the special education process.



COMMONWEALTH OF VIRGINIA

Department of Education

*Division of Special Education and Student Services
Office of Dispute Resolution and Administrative Services*

P.O. Box 2120
Richmond, Virginia 23218-2120

Special Education Proposed Regulations Summary of Comments September 1, 2008

PUBLIC COMMENT PERIOD:

The official public comment period extended from April 28, 2008 through June 30, 2008. Comments received, however, prior to the official public comment period and post-NOIRA, were accepted and included in this summary. Comments were received electronically through e-mail and on the electronic Town Hall, by fax, by mail, and hand delivered. In addition, oral testimony was heard and transcribed and written comments were submitted at nine (9) public hearings held throughout Virginia: South Boston, Abingdon, Roanoke, South Riding (Loudoun County), Richmond, Norfolk, Vienna, Tappahannock, and Charlottesville.

- Total number of commenters (individuals and organizations): 1,940
- Total number of submissions (some commenters made multiple submissions): 2,233
- Total number of comments: 38,752

The following summary is a composite of the public comments received during the public hearings, and during the comment period. The Summary includes the particular regulation cite as a point of reference and the Virginia Department of Education's response to the comment(s). Requests for a copy of this document may be made to:

Melissa C. P. Smith
Office of Dispute Resolution and Administrative Services
Virginia Department of Education
804-225-2013
E-mail: Melissa.Smith@doe.virginia.gov

Abbreviations for Commenters:

Adm	LEA Administrator	Int	Interpreter	Psy	Psychologist
Adv	Advocate	ITC	Infant & Toddler Program	PT	Physical Therapist
AO*	Advocacy Organization	LAC	Local Advisory Committee	PTA	PTA
Att	Attorney	LEA	Local Educational Agency	Reg	Region (1 of 8 Supt. Reg.)
Aud	Audiologist	LEA Gen	LEA Personnel - General	SLP	Speech/Language Therapist or Pathologist
Brd	LEA Board Member	MD	Medical Doctor	SOP	State Operated Program Personnel
Cit	Citizen	Med	Mediator	Sped Adm	Sped Administrator
CSB	Community Services Board	NOIRA	Notice of Intended Regulatory Action	Sped Tch	Sped Teacher
Con	Consultant	OT	Occupational Therapist	SSEAC	State Advisory Committee
EO	Elected Official	Par	Parent	Stu	Student
Gen Ed	General Education Teacher	PO**	Professional Organization**	Sup	Superintendent
Guid	Guidance Counselor	PRC	Parent Resource Center	SW	Social Worker
HO	Hearing Officer	Prin	Principal/Assistant Principal	VDOE	VDOE Staff
IA	Instructional Aide/Paraprofessional	Priv	Private School	Voc	Vocational Program Staff
IHE-TTAC	TTAC Staff	Prog	Regional Program		
Indiv	Individual with a disability	Prv Tch	Private Teacher		

* & ** indicates a listing is included and is found on the next page.

*** *Advocacy Organizations* that submitted comments include:**

- Albemarle-Charlottesville NAACP
- Appalachian Independence Center, Inc.
- The Arc of Central Virginia
- The Arc of Greater Prince William County
- The Arc of Loudoun
- The Arc of Northern VA
- The Arc of Rappahannock
- The Arc of the Virginia Peninsula
- The Arc of Virginia
- Autism Advocacy Coalition of VA
- Autism Society of America – Northern VA Chapter
- Blue Ridge Independent Living Center
- Down Syndrome Association of Greater Richmond
- Down Syndrome Association of Hampton Roads
- Down Syndrome Association of Northern VA
- Endependence Center of Northern VA
- Fairfax Area Disability Services Board
- Hanover ARC, Inc.
- Junction Center for Independent Living, Inc.
- Just Children
- National Alliance on Mental Illness in VA
- National Organization of Parents of Blind Children
- Parents of Autistic Children of Northern VA
- Parent Educational Advocacy Training Center
- Piedmont Independent Living Center
- Prince William County Autism Support Group
- Project HOPE
- Resources for Independent Living, Inc.
- Southwest VA Legal Aid Society
- The Action for Special Kids (TASK)
- VA Board for People with Disabilities
- VA Coalition for Students with Disabilities
- VA Office for Protection and Advocacy
- Voices for Virginia's Children

*****Professional Organizations* that submitted comments include:**

- Learning Disabilities Association of VA
- Spotsylvania Education Association
- VA Association of Independent Specialized Education Facilities
- VA Association of Visiting Teachers and School Social Workers
- VA Council for Administrators of Special Education
- VA Division on Career Development and Transition
- VA Division for Early Childhood of the Council of Exceptional Children
- VA Education Association

Issue	Source	Comments	VDOE Response
Return Regulations to VDOE for Revision (22 comments)	1 Att 4 Cit 1 Gen ed 11 Par 3 SLP 1 Voc (21)	Support returning proposed regulations to VDOE for revisions because of the elimination of many procedural rights contained in the current regulations.	The Board of Education will consider all public comments and respond in accordance with the requirements of IDEA and the APA process. Given the significant changes between the final regulations and the 2002 regulations, it is not feasible to use "track changes" to compare the two documents. Rather, following the completion of the APA process, VDOE will issue guidance documents comparing the two for clarity.
	1 Par (1)	Requests that during VDOE's revision process, track changes be used to ensure clarity regarding what has been changed and the direct relationship to the new federal regulations.	
General comments (4 comments)	1 Sped Adm (1)	Requests the State Board of Education accept the proposed regulations.	The Board of Education appreciates the public's significant participation in the public comment process, and will carefully review and consider each comment as it makes final determinations regarding the final regulations to ensure that students with disabilities in Virginia are appropriately served.
	1 Stu (1)	Comments that he wants "to learn to read and work with money."	
	1 Stu (1)	Comments that he is the brother of a child with autism.	
	1 Stu (Group) (1)	Group submitted a poster board as public comment, focusing on how special education has benefited the students, and supporting parental participation in the IEP process.	
Paperwork Reduction (7 comments)	2 Sped Adm 2 Sped Tch (4)	Oppose any changes that increase paperwork for teachers, shifting the focus to process rather than results. Children benefit from a teacher who is in the classroom providing instruction.	In an effort to ensure the focus of LEA staff is on instructional accountability, efforts have been made throughout these regulations to minimize paperwork, where appropriate, without compromising the procedural protections to which students with disabilities and their families are entitled.
	1 Brd 1 OT 1 Sped Tch (3)	Support the elimination of unnecessary paperwork.	
Parent Resource Centers (1 comment)	1 Par (1)	Suggests more funding for community based PRCs as they assist parents through due process where a school based PRC does not assist parents with due process issues.	VDOE does not believe that the suggested change is in concert with the language of IDEA 2004, and its federal implementing regulations.
Parent Participation in Process – General (284 comments)	1 Att (1)	Suggests adding language that would allow parents to have the right to observe and evaluate the education and care of their children in a non-disruptive manner.	VDOE does not believe it is appropriate to regulate an LEA's policies and procedures regarding classroom observations.
	4 Adv 2 AO	Oppose any changes that would limit the parent's right to be a part of the special education/IEP process or to provide consent. Rationales:	The final regulations continue to ensure complete parent participation in all aspects of the special education process. The

Issue	Source	Comments	VDOE Response
	2 Att 1 Aud 4 Brd 58 Cit 3 EO 1 Guid 1 IHE 1 Indiv 1 Int 6 LEA Gen 1 MD 150 Par 1 PO 12 Prin 1 Psy 9 Sped Adm 15 Sped Tch 7 Stu (280)	<ul style="list-style-type: none"> • Parents need input into the development of their child's IEP. • Parents need to be partners in the education process since they know their child. • To do otherwise, prevents the parents from serving as their child's advocate, and it is their right and responsibility to speak for their child. • It helps to foster the child in reaching his/her potential. • To do otherwise, could result in additional costs, including the cost of due process. • Removing parental involvement is a denial of FAPE in that it is required by the IDEA. • Communication between the school division and the parent needs to be improved, not reduced. 	<p>proposed regulations continue to ensure all of the procedural protections formally provided, including the parent's right to dispute resolution options such as mediation or a due process hearing.</p>
	1 Cit (1)	<p>Opposes proposed changes and supports the comments and position of the Special Education Committee of Fairfax County PTAs and Gov. Tim Kaine. Until now, Virginia has been a leader in recognizing the importance of parent/school partnerships.</p>	
	1 Cit 1 Par (2)	<p>Oppose any changes that would remove or limit parent involvement in the child's education.</p>	
Regulations Revision Process (21 comments)	2 Adv 3 Cit 1 Gen Ed 8 Par 1 Sped Tch (15)	<p>Generally opposed to proposed changes and support retaining existing regulations. Rationales:</p> <ul style="list-style-type: none"> • Opposed to changes that would reduce services to students with disabilities. • It is a waste of resources to "fix" something that is not "broken." • Proposed changes would move Virginia "back." • The proposals infringe on the rights of children. • Parents are still trying to become acclimated to the current special education process. 	<p>The Board of Education appreciates the public's significant participation in the public comment process, and will carefully review and consider each comment as it makes final determinations regarding the final regulations to ensure that students with disabilities in Virginia are appropriately served.</p> <p>VDOE agrees with the recommendation to develop a contemporaneous Parent Resource Guide and will takes steps to do so.</p> <p>The determination regarding whether to use "shall" versus "must" was determined in accordance with guidance from the Virginia Register of Regulations regarding the format for Virginia Regulations.</p>
	1 SSEAC (1)	<p>Recommends that VDOE develop and issue a Parent's Resource Guide to coincide with the release of the regulations.</p>	

Issue	Source	Comments	VDOE Response
	1 Par (1)	Suggests replacing “shall” with “must” to comply with the federal regulations.	A Stakeholder's Group was convened in December 2006 to provide feedback to the Board of Education regarding the drafting of the regulations. This group included parents, educators, state agencies, special education attorneys and parent attorneys. The comments of this group, along with the concerns raised during the NOIRA public comment period, were strongly considered during the drafting of the proposed regulations. Subsequent public comment has guided the revision process regarding the final regulations, including significant participation by the SSEAC.
	2 Par (2)	Concerned about the level of participation by constituency groups (parents, advocacy groups, teachers, etc.) in the development of the proposed regulations. Recommended a parent advisory component in the development.	
	1 Par (1)	Recommends the Board of Education consider the impact of the proposed changes on students who receive special education services outside of the school setting.	
	1 Cit (1)	Supports all Town Hall comments.	
Alignment with other regulations and statutes (117 comments)	3 Cit 2 Guid 1 LEA Gen 1 Par 1 Prin 1 Psy 1 SLP 32 Sped Adm 11 Sped Tch 3 Sup (56)	Support the proposed language that aligns the special education regulations to the goals/provisions of IDEA and NCLB to ensure accountability and a focus on instructional outcomes.	The language of IDEA 04 and its federal implementing regulations were aligned with NCLB, placing increased emphasis on student achievement and school accountability. The Board of Education recognizes the importance of such an alignment with NCLB and has included language to this effect in the development of the proposed special education regulations. The proposed regulations continue to ensure complete parent participation in all aspects of the special education process. Efforts have been made to ensure clarity regarding the alignment of these final regulations and other state and federal mandates.
	1 Cit 1 LEA Gen 1 Par 6 Prin 1 Psy 1 SLP 33 Sped Adm 11 Sped Tch 3 Sup (58)	Support the proposed language that promotes a unified system of education and collaborative instructional services, uniting general and special education students to provide effective and consistent instruction.	

Issue	Source	Comments	VDOE Response
	1 Cit 1 Par (2)	Suggest that NCLB places a high value on parent participation. Therefore, weakening parental participation in education decision making is inconsistent with NCLB.	
	1 Sped Tch (1)	Recommends clarification regarding proposed regulation changes that minimize the number of rules and policies that must meet federal guidelines regarding staffing requirements, school-level systems designed to enable children with disabilities to meet the challenging state achievement standards and to new regulations for Deaf Education Teacher Certification.	
Exceeding Federal Regulations (644 comments)	3 Adm 12 Prin 3 Sped Adm 1 Sped Tch (19)	Support minimizing the number of rules, regulations, and policies to which Virginia's local education agencies and schools are subject under federal statute and regulations.	In order to limit unnecessary requirements while also protecting the rights of parents and children, the Board of Education eliminated several Virginia specific requirements. With local accountability to ensure that students with disabilities participate in the general education curriculum and on standardized tests alongside peers without disabilities, the Board minimized procedural requirements to allow LEAs the flexibility to use staff and other resources efficiently and flexibly to meet accountability expectations.
	1 AO 27 Cit 1 LAC 19 Par 1 PTA 1 SLP (50)	Support exceeding federal language. While the federal language doesn't encourage states to go beyond the federal regulations, it is not prohibited. States can exceed federal regulations, thus allowing Virginia-specific rights.	
	5 Adv 10 AO 291 Cit 1 MD 2 Int 73 Par 2 PT 1 PTA 1 SLP 2 Stu (388)	Suggest that states can and do regularly exceed federal regulations, so minimizing state regulations cannot mean the elimination of Virginia-specific rights that are currently guaranteed.	
	1 AO 1 Par (2)	Assert USDOE's intent in 300.199 is to clearly distinguish federal obligations from those that are state or locally imposed. States should not be excessive in their additional requirements.	
	1 AO (1)	Suggests that the federal regulations do not discourage States from developing beneficial programs or establishing rules that best serve the needs of children with disabilities. USDOE "is in no way attempting to reduce State input or State practice in this area."	

Issue	Source	Comments	VDOE Response
	1 LEA 2 LEA Gen 1 Par 12 Prin 11 Sped Adm 2 Sped Tch 1 SW (30)	Support revisions that clarify and reinforce IDEA 2004 and generally supports the proposed regulations in that they do not exceed federal regulations.	
	2 Adm 1 Att 12 Cit 7 Gen Ed 1 Guid 10 LEA Gen 1 OT 5 Par 2 PO 1 PRC 11 Prin 1 Psy 1 PT 13 SLP 44 Sped Adm 38 Sped Tch 4 Sup (154)	Oppose additional requirements added by Virginia, thus supporting a policy of not exceeding federal laws and regulations.	
Foreword Content (3 comments)	1 Priv (1)	Opposes the direction taken with the changes in the regulations, suggesting that it moves the special education system closer to a system in which all of the power rests with the LEAs. Suggests that parents already feel powerless and are intimidated by the jargon and the lengthy regulations and process. Also suggests that these new regulations would make it more difficult for parents to adequately advocate for their child. Suggests that while LEAs want to provide appropriate services, as the financial resources continue to shrink, these regulations would make it easier for LEAs to choose the easier route of providing limited or no supports.	In order to respect the intent of the IDEA to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education carefully considered those areas where Virginia regulations have typically exceeded the federal regulations and proposed several changes which do not interfere in the parents' right to advocate for their children. Mediation, complaints and due process hearings continue to be available as dispute resolution options. VDOE does not believe that it is appropriate to include such detailed language in the Foreward to these regulations. However, VDOE agrees that such clarity may be needed and will consider the recommended language in a subsequent guidance document and will recommend additional language to the Preamble.
	1 SSEAC (1)	Expand the Foreward to include information that sets the stage for the people who will need access to the regulations. This would include an overview of the regulations, written in easy to access language; IDEA 2004 language including an emphasis on "high expectations" and "educating children in the regular classroom so they can meet developmental goals and, to the maximum extent possible, the challenging expectations that have been established for all children and be prepared to lead productive and independent adult lives, to the maximum extent possible;" information about best practices (with policy and guideline documents	

Issue	Source	Comments	VDOE Response
		since they change over time); IDEA purpose language, especially the provision that special education services should be designed to meet students' unique needs and prepare them for further education, employment and independent living. Including this language would provide clarification and background information with minimal fiscal and administrative impact.	
	1 Sped Adm (1)	Supports the direction taken with the proposed regulations.	
Definitions – Age of Eligibility 8 VAC 20-81-10 (1 comment)	1 Sped Adm (1)	Opposes allowing a student who has not reached their 22nd birthday before September 30 to remain in school for the year. It exceeds federal requirements and places an undue burden on high schools.	This provision is in line with Virginia's long-standing practice regarding these students, and it was inserted for clarity. This practice ensures a smoother transition for these students to post-secondary activities.
Definitions/Eligibility – Autism 8 VAC 20-81-10 8 VAC 20-81-80 L. (835 comments)	18 Adv 21 AO 2 Att 474 Cit 2 EO 2 Int 2 LAC 1 LEA 1 MD 156 Par 2 PO 2 PT 2 PTA 3 SLP 1 SOP 1 Sped Adm 3 Sped Tch 3 Stu 1 Sup (697)	Oppose including any eligibility criteria that is more restrictive than those defined in the federal regulations and which take away the flexibility for LEAs to make individual eligibility decisions, and cause some children to be inappropriately identified under other eligibility categories. The proposed VA regulations have improperly substituted the word “diagnosed” for “identified,” since LEA staff are not qualified to make medical diagnoses and are not qualified to use the DSM which is for medical diagnoses. DSM is also too narrow for educational purposes and may require a medical diagnosis.	<p>The proposed definition does not limit an LEA from identifying a child who manifests the characteristics after age 3. It merely indicates that the characteristics are “generally evident before age 3.”</p> <p>To ensure greater consistency in the identification of students with autism, eligibility criteria were included. While the DSM is a well-accepted set of standards, the VDOE agrees that this reference should not be included and will recommend its removal to the BOE.</p> <p>VDOE recognizes that the term “diagnosed” has mistakenly been substituted for the term “identified” in the definition of autism at 8 VAC 20-81-10. VDOE will recommend this correction to the BOE.</p> <p>Creating an advisory group other than the eligibility group to determine autism criteria would be redundant and is not advisable.</p> <p>VDOE will recommend to the BOE revised language to enhance clarity of the criteria.</p>
	3 Adv 6 AO 2 Att 15 Cit 1 MD 28 Par 1 PT 1 SLP 2 Sped Adm 2 Stu (61)	Suggest amending the definition of autism to use “developmental <u>spectrum</u> disability.” Also suggests adding, “Difficulties in abstract thinking, flexible thinking, social awareness and judgment may be present as well as perseverative thinking. Delays in fine and gross motor may also be present. The order of skill acquisition frequently does not follow normal developmental patterns.” Suggest deleting, “A child who manifests the characteristics of autism after age three could be diagnosed as having autism if the criteria in this definition are satisfied.” Further suggests that these changes be framed as characteristics on the autism spectrum rather than criteria.	<p>The federal language regarding “A child who manifests . . . “ is included in this provision.</p>

Issue	Source	Comments	VDOE Response
	4 Adv 64 Cit 7 Par (75)	Support definition consistent with federal regulation which states, "A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in this definition are satisfied."	
	1 Par (1)	Suggests early intervention for children with autism.	
	1 Par (1)	Suggests the creation of an advisory committee with extensive input from any parent with an autistic child who is interested in contributing information because they are the only people who truly understand autism.	
Definitions - Caseload 8 VAC 20-81-10 (14 comments)	3 AO 1 Att 1 Gen Ed 1 LEA Gen 2 Par 1 PO 2 SLP 2 Sped Tch (13)	Support revising the definition of caseload to state the following: Caseload means the total number of students whose individualized education plans are managed by special education personnel. Managing a caseload means ensuring evaluations and reevaluations are completed in a timely manner, and IEPs, including functional behavioral assessments and behavior intervention plans, are written, implemented, and revised in a timely manner." The current proposed definition is confusing, and could apply only to those special education students who are served by a special education teacher in a classroom. The definition should reflect current practice.	The LEA determines the responsibilities of special education teachers, assistant principals, and other professionals who may be assigned functions under the special education process. As such, it is not advisable to regulate the specific responsibilities related to a teacher's caseload other than the number of students for which he/she has for teaching.
	1 SLP (1)	Supports proposed revision to the definition of caseload and believes it should apply to related service providers as well as special education teachers.	
Definitions - Change in Placement 8 VAC 20-81-10 (55 comments)	3 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (54)	Suggest adding, "Any change in setting for a student receiving special education that does not replicate all elements of the educational program of the student's previous setting" as this would bring the definition in line with case law from the 4 th Circuit Court of Appeals on what constitutes a change in placement. A.W. v. Fairfax County School Board, 372 F.3d 674 (4 th Cir. 2004).	VDOE will recommend additional language consistent with the 4 th Circuit's ruling. No additional changes are required.
	1 Att (1)	Suggests adding definitions for "change in placement" and "change in placement for discipline" so that they reflect the change in school assignment is not a change in placement.	
Definitions - Child Study Committee 8 VAC 20-81-10	3 Adv 6 AO 2 Att 13 Cit	Oppose proposed elimination of child study committee and suggests retaining this definition.	Under the proposed regulations, each LEA would have responsibility for developing a procedure for processing referrals within the regulatory frameworks set forth in these proposed regulations. Including a definition, therefore, would not be

Issue	Source	Comments	VDOE Response
(54 comments)	1 MD 25 Par 1 PT 1 SLP 2 Stu (54)		appropriate.
Definitions - Child with a Disability 8 VAC 20-81-10 (53 comments)	6 AO 2 Att 9 Cit 1 LAC 1 MD 28 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu (52)	Suggest that Developmental Delay and Severe Disabilities be restored and remain as they appear in the current VA regulations and in this definition.	Since there is no longer a separate teacher licensure requirement for severe disabilities and because there is no such term included in the federal regulations, VDOE does not recommend including severe disabilities in the definition of Child with a Disability. Students previously identified as having a severe disability will likely be eligible either under the category of multiple disabilities or one or more of the other categories. VDOE will recommend including developmental delay in the definition as it relates to the requirements of 8 VAC 20-81-80 N.
	1 SSEAC (1)	Suggests inserting the term, "developmental delay," in the definition.	
Definitions – Consent 8 VAC 20-81-10 (2 comments)	1 Par (1)	Opposes the additional standard of consent that allows for an agreement that is not in writing. Suggests that to avoid conflicts, an agreement should be in writing.	Consistent with the federal regulations, consent is in writing. Agreement is included since the federal regulations allow for agreement in certain cases.
	1 SLP (1)	Opposes changes to the definition of parent consent. Suggests that it remain as it is currently defined.	
Definitions – Consultative Services 8 VAC 20-81-10 (1 comment)	1 Par (1)	Suggests adding a definition for consultative services which would provide clarification (i.e., when a general education teacher or special education aid consults with a special education teacher and then provides instruction to a student). These services are not identified in the proposed regulations.	LEAs use different terms for specific services and implement services differently in order to provide FAPE. It would be inappropriate to regulate the strategies that LEAs may use for providing services.
Definitions – Continuum of Services 8 VAC 20-81-10 (1 comment)	1 SLP (1)	Suggests that this term be defined in the regulations.	Continuum of services is a term that reflects a variety of options related to least restrictive environment and is detailed at 8 VAC 20-81-130. VDOE does not recommend that it be included separately in the definitions section due to its applicability to LRE.
Definitions/Eligibility – Deafness/Hearing Impairment	1 Par (1)	Suggests that the definition of hearing impairment be expanded to include children with impaired neural function of the audition system. In VA, these children are typically identified under other categorical labels that obscure the	To ensure greater consistency in the identification of students with disabilities among LEAs, eligibility criteria were included in 8 VAC 20-81-80, "Eligibility," but not in the definition. The criteria

Issue	Source	Comments	VDOE Response
8 VAC 20-81-10 (56 comments)		nature and impact of the disability.	do not require the LEAs to make a medical diagnosis; rather, criteria are included to assist the LEA to identify a student with a disability covered under IDEA who requires special education and related services.
	1 Sped Adm (1)	Opposes the proposed regulation that discriminates the two groups because this serves to cause undue anxiety for parents and staff, and confusion for eligibility committees. The appropriate label and eligibility criteria should be based on students who are deaf/hard of hearing."	The definitions used in the regulations are consistent with federal requirements.
	7 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 28 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu (54)	Oppose the use of criteria beyond the federal definition and suggests that LEAs are not medical professionals and should not attempt to diagnose deafness. Also oppose that only bilateral hearing loss is addressed and unilateral hearing loss is not addressed.	
Definitions/Eligibility – Developmental Delay 8 VAC 20-81-10 8 VAC 20-81-80 N. (1170 comments)	3 Adm 1 Cit 1 LEA 3 LEA Gen 2 PO 23 Prin 32 Sped Adm 17 Sped Tch 1 SW (83)	Support proposed revision of "Developmental Delay" which limits the age of DD to age 2-5 and permits LEAs to include DD as one of the disabilities when determining whether a preschool child age 2 by September 30 to 5 inclusive is eligible for special education and related services.	Based on analysis of December 1 Child Count from 2005 and 2006, the Board of Education proposed narrowing the age range for Developmental Delay to ages 2 to 5 inclusive. Virginia has experienced a disproportionate number of minority students (primarily African-American) ages 6 to 8, inclusive, being identified as having a Developmental Delay. To allow the use of developmental delay for school age students may: <ul style="list-style-type: none"> continue to result in a higher number of minority students being identified as needing special education and related services due to the broad interpretation of the category, and result in the identification of school-age students from low-income families whose lack of experience would result in measured delays but do not have disabilities. The <i>Code of Virginia</i> has required special education for students with disabilities from age 2 since 1972. It would require a revision in the <i>Code of Virginia</i> to change this mandate.
	1 AO (1)	Opposes additional eligibility criteria.	
	20 Adv 39 AO 9 Att 2 Brd 560 Cit 1 Con 1 CSB 5 EO	Oppose the limitation of ages 2 to 5. Reasons cited included: <ul style="list-style-type: none"> this is not the solution to disproportionality; it may not be possible to make a definitive diagnosis at age 5; the use of DD is important for young children who benefit from early intervention but are not easily categorized; it is not always clear at an earlier age when the student struggles to acquire skills and that if DD is not an option for older students, there will be more paperwork and more meetings as regular education teachers struggle to 	

Issue	Source	Comments	VDOE Response
	8 Gen Ed 1 Gen Tch 1 Guid 2 Int 1 ITC 1 IA 3 LAC 3 LEA Gen 3 MD 1 OT 328 Par 3 PO 2 Prin 1 Priv 8 Psy 4 PT 4 PTA 10 SLP 1 SOP 11 Sped Adm 17 Sped Tch 1 SSEAC 6 Stu 1 Sup 1 SW (1059)	serve these students; <ul style="list-style-type: none"> there is more disproportionate representation among MR category and this will increase that; identifying a learning disability before 8 or 9 years old would be as difficult as trying to identify language impairments in a 6 month old child; 	
	1 Sped Adm (1)	Supports the use of developmental delay if children have significant impairments based on standardized testing and test definitions of significant delay. If definition is watered down (using less specific criteria not grounded in standardized testing), children without "disabilities", but whose parents want some sort of enrichment, will be identified.	
	3 Adv 5 AO 1 Att 5 Cit 10 Par 1 Stu (25)	Applaud the BOE for continuing to extend DD to age two but oppose the proposed change to age 5 and suggests using DD through age 9.	
	1 Par (1)	Supports federal regulations for early intervention for children in K-12 to address disproportional concerns.	

Issue	Source	Comments	VDOE Response
Definitions – Due Process Hearing 8 VAC 20-81-10 (1 comment)	1 Par (1)	Opposes VDOE's attempt to "write themselves out of any liability" by stating that a "due process hearing means an administrative procedure . . . that arises between a parent(s) and a local educational agency." The federal regulations refer to "a public agency." Suggests rewriting the provision to state, "Due Process hearing means an administrative procedure . . . that arises between a parent(s) and either a local educational agency or the State Educational Agency."	The federal requirements are for the primary purpose of resolving conflict between the parent and the local educational agency. Language is consistent with previous state special education regulations and current federal requirements.
Definitions/Eligibility - Emotional Disturbance 8 VAC 20-81-10 (788 comments)	11 Adv 20 AO 3 Att 583 Cit 2 Int 1 LAC 1 LEA 1 MD 1 OT 146 Par 1 PO 2 PT 4 PTA 3 SLP 1 SOP 2 Sped Tch 1 SSEAC 5 Stu (788)	Support using the term "Emotional Disability" rather than "Emotional Disturbance."	The term emotional disturbance is the term used in the federal regulations. VDOE agrees with these comments, however, and will recommend a change to the BOE. Additionally, VDOE will recommend retaining the phrase "that adversely affects a child's educational performance."
Definitions - Exceptional Circumstances 8 VAC 20-81-10 (1 comment)	1 Par (1)	Supports including a definition for clarification.	Exceptional circumstances cannot be defined since it would depend on the nature of the specific situation and the standard of reasonableness would apply.
Definitions - Functional Behavioral Assessment 8 VAC 20-81-10 (916 comments)	12 Adv 16 AO 5 Att 606 Cit 1 EO 2 Int 2 LAC 1 LEA Gen 1 MD	Oppose permitting FBA to be only a review of existing data without parental input. The definition should require an FBA be an evaluation that consists of a systematic collection and analysis of direct and indirect data that may include a review of existing data.	Since the IEP team determines the parameters of the FBA, the parent is an essential part of the process. Specific data to be collected or used as the basis of the FBA is the decision of the IEP team and based on the specific behavior(s) of concern. If the IEP team determines that appropriate data exists, it would be inappropriate to require additional data collection. If the FBA is not a review of existing data conducted at an IEP meeting, parental consent is required for the assessment. This position is in concert with USDOE's interpretation of these requirements.

Issue	Source	Comments	VDOE Response
	1 OT 167 Par 1 PO 2 PT 2 PTA 3 SLP 4 Sped Tch 3 Stu (829)		VDOE will recommend added language to include " or new testing data as determined by the IEP team," and modify "be" to "include."
	3 Adv 10 AO 3 Att 15 Cit 1 EO 1 LAC 1 MD 42 Par 1 PO 1 PT 2 Stu (80)	Suggest adding the language, "an evaluation with parent participation" to ensure that this is treated as an evaluation with appropriate parent involvement. Referenced Letter to Scheinz from US DOE OSEP. Further suggests "may include a review" rather than "may be".	
	1 SSEAC (1)	Supports the proposed definition with a request to include language, "... may be a review of existing data . . . or new testing data as may be required."	
	1 Par (1)	Opposes FBA without parental input.	
	1 AO (1)	Opposes the proposed regulations that allow an FBA to be a review of existing data. Suggests that it should evaluate the child in all settings throughout the school day.	
	1 AO 1 Sped Tch 1 Stu (3)	Suggest that the definition of FBA be defined as an evaluation since it is used to seek the underlying cause(s) of the misconduct and should have all of the requirements of an evaluation associated.	
	1 AO (1)	Opposes an FBA being simply a review of existing data, and supports that FBAs be conducted by a professional behavioral specialist which can identify the triggers to negative behaviors.	
Definitions – Homeless Children 8 VAC 20-81-10	1 AO (1)	No change is recommended for the definition included in the proposed regulations.	The language included refers to the requirements of the McKinney-Vento Homeless Assistance Act and reflects the requirements of that legislation.

Issue	Source	Comments	VDOE Response
(1 comment)			
Definitions - Home tutoring 8 VAC 20-81-10 (1 comment)	1 Sped Adm (1)	Suggests clarifying home tutoring and how it is different from home instruction.	This term, as well as home instruction, is included in the <i>Code of Virginia</i> , therefore, further clarification is not necessary. However, home tutoring assumes that someone other than the parent is providing the instruction while home instruction assumes that the parent provides the instruction.
Impartial hearing officer 8 VAC 20-81-10 (1 comment)	1 AO (1)	Opposes the deletion of this term from the proposed regulations and opposes the replacement with special education hearing officer. Suggests that it be kept as it is.	VDOE will recommend this change to the BOE, however, the term "special education" will remain in order to distinguish the special education hearing officer from the Supreme Court of Virginia's general hearing officer list.
Definitions - Implementation Plan 8 VAC 20-81-10 (53 comments)	3 Adv 6 AO 2 Att 13 Cit 25 Par 1 PT 1 SLP 2 Stu (53)	Oppose the proposed deletion of the implementation plan as a requirement for LEAs.	Implementation plan was not included to avoid the unnecessary paperwork associated with a request for a due process hearing that is either withdrawn or found for the LEA. VDOE will suggest revising, however, to include an implementation plan in these cases where the hearings have been fully adjudicated, and reinsert the term in the "Definitions."
Definitions – Inclusion 8 VAC 20-81-10 (1 comment)	1 SLP (1)	Suggests that the regulations identify standards for the number allowed in an inclusion classroom and a definition for inclusion and continuum of services. Suggests that inclusion make up no more than a third of a class.	Since "inclusion" is not a term used in the federal regulations, it is not appropriate to include it in these regulations. Likewise, it is not appropriate for the regulations to include requirements for the strategies an LEA uses to provide services to students with disabilities in general education settings.
Definitions – Initial Placement 8 VAC 20-81-10 (1 comment)	1 Par (1)	Opposes removal of the reference to initial placement by the LEA and private school program, and this is counter to the requirements regarding continuum of alternative placements. Proposes that the private school program continue to be included.	This additional definition is not necessary since appropriate procedures are included for an initial eligibility and placement. Other than those procedures, there is no reason to differentiate the initial placement.
Definitions - Interpreting Services	1 Par (1)	Suggests broadening interpreting services to include "intervenors."	The proposed provisions are consistent with IDEA and Virginia's licensure provisions. VDOE will suggest, however, including

Issue	Source	Comments	VDOE Response
8 VAC 20-81-10 (114 comments)	6 AO 1 Att 1 Cit 1 EO 1 LAC 18 Par 1 PO 1 SLP 1 Sped Tch 1 Stu (32)	Oppose limiting the use of interpreting services to students who are deaf or hard of hearing. They should be available to other students who need sign language to communicate such as students with Oral Motor Apraxia and Down Syndrome.	language to clarify the use of interpreting services for students who are not deaf or hard of hearing.
	5 AO 1 Att 1 Cit 1 EO 1 LAC 5 Par 8 Par 1 Par 1 PO 1 SLP 1 Sped Tch 1 Stu (27)	Oppose the deletion of language that defined interpreting services as “translating from one language to another” and suggest that this is necessary for those children who use oral interpreting and who communicate via translating from one language to another.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 2 Stu (53)	Suggest changing the proposed definition to exclude “as used with respect to children who are deaf or hard of hearing” and adding “translating from one language to another (e.g., sign language to spoken English), oral interpreting and . . .” Suggest that there are children who are not deaf or hard of hearing (i.e., oral motor apraxia, Down syndrome) who utilize interpreting services as their main source of communication.	
	1 Att (1)	Supports the change in definition.	
Definitions - Level 1 Services 8 VAC 20-81-10 (83 comments)	3 Adv 11 AO 1 Att 14 Cit 1 EO 1 LAC	Suggest retaining current definition which includes “and related services.” Further suggest that it is necessary because it clarifies that children receiving Level 1 services may also be receiving related services.	Level 1 services are defined by the instructional services provided by a special education teacher because of the funding mechanism that provides state funding to LEAs. Level 1 and level 2 services do not include related services personnel since the services provided by related services personnel do not apply to the funding of teachers. The services provided by related

Issue	Source	Comments	VDOE Response
	1 MD 40 Par 1 PO 1 PT 2 SLP 1 Sped Tch 3 Stu (80)		services personnel also do not affect the responsibilities of the special education teacher providing the service.
	1 AO 1 Att 1 Par (3)	Oppose the use of only special education to calculate the amount of time a student's instructional day is spent receiving special education services. Suggest adding the phrase "and related services" in order to capture the total amount of time a child receives services.	
Definitions - Limited English Proficient 8 VAC 20-81-10 (1 comment)	1 Att (1)	Suggests adding the word "or" between items 3.a. and 3.b. If items 3.c. and 3.d. modify only 3.b., they should be renumbered.	VDOE agrees and will recommend this suggestion to the BOE.
Definitions/Eligibility - Mental Retardation 8 VAC 20-81-10 8 VAC 20-81-80 P. (966 comments)	9 Adv 30 AO 7 Att 592 Cit 1 EO 2 Int 2 LAC 1 LEA Gen 1 LEA 2 MD 1 OT 185 Par 1 PO 3 PT 3 PTA 3 SLP 3 Sped Adm 2 Sped Tch 4 Stu (852)	Support using the term "Intellectual Disability" rather than "Mental Retardation" or "Cognitive Disability."	<p>The term mental retardation mirrors the federal regulations. The 2008 Session of the Virginia General Assembly enacted legislation that requires that the terms "mentally retarded" and "mental retardation" be replaced with the term "intellectual disability" throughout the Code of Virginia. The provisions of this act shall not become effective unless reenacted by the 2009 Session of the General Assembly.</p> <p>VDOE agrees with these comments, however, and will recommend this revision to the BOE.</p> <p>To ensure greater consistency in the identification of students with disabilities among LEAs, eligibility criteria were included. The criteria do not require the LEAs to make a medical diagnosis; rather, criteria are included to assist the LEA to identify a student with a disability covered under IDEA who requires special education and related services.</p> <p>Additionally, VDOE will recommend retaining the phrase "that adversely affects a child's educational performance."</p>
	2 Par 3 Cit (5)	Oppose the use of terms, "educable" and "trainable" and supports the use of "mild, moderate, and significant."	

Issue	Source	Comments	VDOE Response
	7 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 29 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu (55)	Oppose the use of criteria beyond the federal definition and also suggests that LEAs are not medical professionals.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (54)	Suggest using the definition from the American Association on Intellectual and Developmental Disabilities which states, "means a disability characterized by significant limitations both in intellectual functioning and in adaptive behavior as expressed in conceptual, social, and practical adaptive skills. This disability originates before the age of 18."	
Definitions – Music Therapy 8 VAC 20-81-10 (3 comments)	1 MT 2 Par (3)	Suggest adding a new definition, Music Therapy which means services provided by a Board Certified Music Therapist and includes: 1. Assessing needs, developing individualized goals and designing and implementing music interventions to address academic, cognitive, behavioral, social, and physical needs; 2 Developing adaptive music strategies to encourage a child's participation in the school environment; and 3. Collaborating with teachers and other staff on ways to utilize music therapy techniques to set behavioral expectations and maintain structure for students.	As with many other related services personnel, such as OTs and PTs, LEAs may use a music therapist locally to provide services, but would need to ensure that whoever provides a related service has met appropriate requirements to provide the services. VDOE does not believe it is necessary to regulate this area.
Definitions – Nonacademic Settings 8 VAC 20-81-10 (1 comment)	1 Par (1)	Suggests including a definition for "nonacademic settings" to add clarity since it is not clear to many how the non-academic provision works. This is a provision that has been inconsistently implemented in a number of LEAs. From the federal regulations is language not included in the proposed regulations.	Nonacademic settings are different for different students and could include any setting within the school. As such, it is the responsibility of each LEA to determine the nonacademic settings available to students and apply the standard to ensure that students are included, if appropriate.
Definitions/Eligibility – Orthopedic Impairment 8 VAC 20-81-10	2 Sped Adm 1 Sup (3)	Oppose the removal of the phrase, "adverse effect of educational performance in the area of "from the current definition as it is not consistent with other regulatory definitions as its inclusion provides clarity and lessens the likelihood of misinterpretation.	As with the definitions of other disabilities included in the proposed regulations, VDOE will recommend as appropriate including language indicating that it must have an adverse effect on educational performance.

Issue	Source	Comments	VDOE Response
(5 comments)			The term is consistent with the federal regulations.
	1 AO 1 Par (2)	Suggest the use of “physical disability” rather than orthopedic impairment.	
Definitions/Eligibility - Other Health Impairment 8 VAC 20-81-10 8 VAC 20-81-80 Q. (143 comments)	3 Sped Adm (3)	Oppose the use of DSM for diagnosis since not every child who meets these criteria requires special education.	<p>To ensure greater consistency in the identification of students with Other Health Impairments, eligibility criteria were included. The DSM is a well-accepted set of standards. The proposed regulations not only require the identification of a disability but also the determination that special education is required. Examples used are consistent with federal requirements.</p> <p>VDOE will recommend retaining the phrase “that adversely affects a child’s educational performance.”</p> <p>While the DSM is a well-accepted set of standards, the VDOE agrees that this reference should not be included and will recommend its removal to the BOE.</p>
	6 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 28 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu (53)	Oppose the use of criteria beyond the federal definition and also suggests that LEAs are not medical professionals and cannot diagnose medical conditions. Oppose exclusion of ADD from this section.	
	1 Sup (1)	Opposes use of DSM in eligibility criteria for OHI as related to ADHD since OHI encompasses more than ADHD as possible disorders within the OHI category.	
	1 AO 1 Par 1 Psy (3)	Oppose additional eligibility criteria.	
	1 Sped Tch (1)	Suggests that criteria for OHI are needed because it appears to be a “catch all” category for students who should have a 504 plan.	
	3 Adv 11 AO 3 Att 14 Cit 1 EO 1 LAC 1 MD 1 PO	Suggest retaining arthritis and tuberculosis on the list of examples.	

Issue	Source	Comments	VDOE Response
	38 Par 1 PT 1 SLP 1 Sped Tch 2 Stu (78)		
	2 Sped Adm 1 Sup (3)	Oppose the proposed removal of the phrase, “adverse effect of educational performance in the areas of . . .”	
	1 Par (1)	Suggests that the definition be revised to “that is due to chronic or acute health problems such as <u>but not limited to</u> ” before the listing of examples to ensure that relevant conditions can be included.	
Definitions – Parent 8 VAC 20-81-10 (147 comments)	1 Adv 5 AO 1 Att 1 Cit 1 ITC 16 Par 1 PO 1 SLP 1 Sped Tch 1 Stu (29)	Oppose exceeding language in the federal definition and suggest deleting language references the parent(s)’ authority to make educational decisions being extinguished, the child being in permanent foster care, and the foster parent having an on-going long term relationship with the child and willing to make educational decisions and has no interest that would conflict with the interest of the child.	The additional language was used to provide clarification on who can act as a parent in Virginia, and to include state requirements, as well as FERPA provisions. The language complies with federal requirements.
	1 AO (1)	Opposes the limitations imposed with the proposed regulations regarding when a foster parent can act as a parent. Asserts that the federal regulations are less restrictive, thus allowing foster parents to act as parents when the biological or adoptive parents are not acting as parents. Also, the federal regulations protect biological and adoptive parents’ rights by ensuring that they will be the parent when they act as parents. Current language is confusing and school staff, foster parents, and social workers from LEAs have reported that they do not understand the provision.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (54)	Suggest adding language to the definitions, thus stating, “or a judicial decree or order has identified another specific person under subdivision 1.a. through 1.e. to make educational decisions on behalf of the child” since the new federal definition protects biological and adoptive parents’ rights by ensuring that they will be the parent when they act as parents.	

Issue	Source	Comments	VDOE Response
	3 Adv 7 AO 3 Att 14 Cit 1 MD 28 Par 1 PT 2 Stu (59)	Suggest amending the proposed definition to delete language pertaining to foster parents and suggests incorporating all of the federal definition. The proposed regulations are too limiting and confusing.	
	1 Sped Adm 1 LEA 1 PO 1 PTA (4)	Support proposed changed in definition of parent.	
Definitions – Physical Therapy 8 VAC 20-81-10 (1 comment)	1 LEA Gen (1)	Suggests replacing the proposed definition for physical therapy with the definition for physical therapy from the OT/PT Handbook for Public Schools in Virginia.	The definition used in the proposed regulations is consistent with other parts of the Code of Virginia and federal regulations. The handbook is intended to provide more guidance and is not regulatory.
Definitions – Placement 8 VAC 20-81-10 (1 comment)	1 Par (1)	Suggests clearly defining the term, “placement” particularly as it relates to parentally placed students when FAPE is an issue.	VDOE does not believe additional language is needed. Factors related to parentally placed children are sufficiently obtained at 8 VAC 20-81-150.
Definitions – Private School Children with Disabilities 8 VAC 20-81-10 (54 comments)	3 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (54)	Suggest expanding the definition to include children ages 3 – 5 who are placed by their parents in private school that do not qualify as elementary schools. Since most private preschools are not in elementary schools, without this change, their students may not qualify for any services that may be provided under the IDEA provisions for “parentally placed private school children.”	VDOE does not believe this is necessary since the requirements for an LEA to provide a private placement are for all students who are found eligible for special education. Likewise, students whose parents place them in private schools include students from 2 – 21, inclusive. The LEA is responsible for determining whether the private school meets the definition of elementary school. (See Superintendents Memo, Interpretive, No. 1, Feb. 9, 2007)

Issue	Source	Comments	VDOE Response
Definitions – Psychological Services 8 VAC 20-81-10 (3 comments)	1 Att 1 AO 1 Par (3)	Suggest adding “including clinical psychological” to the definition in order to clarify that this provision includes these types of evaluations when needed. Some LEAs refuse to conduct clinical psychological evaluations despite the need for certain data in order to make specific disability identifications.	VDOE does not believe this is necessary since the evaluations would need to assess those areas required to determine eligibility for special education and related services.
Definitions – Reasonable 8 VAC 20-81-10 (1 comment)	1 Par (1)	Suggests including a definition for clarification (ie, if 10 business days is reasonable, make it statutory).	It is not possible to define “reasonable” since this is a term used by the courts to assess what is customary for the circumstance.
Definitions – Related Services 8 VAC 20-81-10 (56 comments)	6 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 28 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu (53)	Oppose the deletion of the terms transliterating and psychological counseling from the definition because it would unnecessarily limit the types of related services children with disabilities can receive.	Related services are required to include whatever services are needed for the child to access appropriate education. As such, the definition included is consistent with federal regulations. Music therapy is included in this definition.
	1 MT 2 Par (3)	Suggest adding music therapy to the list of related services.	
Definitions – School 8 VAC 20-81-10 (1 comment)	1 Par (1)	Supports clearly defining the term, “school” – particularly as it related to parentally placed students when FAPE is at issue.	As applied to parentally placed students, the terms “elementary school” and “secondary school” are defined in 8 VAC 20-81-150.
Definitions - Serious bodily injury 8 VAC 20-81-10 (1 comment)	1 Att (1)	Suggests that the regulations include “bodily injury.”	“Serious bodily injury” is the term used in the federal regulations and the standard used for disciplinary actions under the IDEA.

Issue	Source	Comments	VDOE Response
Definitions/Eligibility – Severe Disabilities Category 8 VAC 20-81-10 8 VAC 20-81-80 (76 comments)	3 Adm 1 LEA 12 Prin 2 Sped Adm 1 Sped Tch (19)	Support proposed elimination of severe disabilities category.	The category, “severe disabilities” was removed since it is not used in the federal regulations. It is anticipated that students currently identified with this disability will qualify as either having multiple disabilities or another specific disability. The elimination of a teacher licensure category specifically for students with severe disabilities also contributed to the elimination of this category. In order to be consistent, VDOE will recommend deleting reference to the “severe disabilities” category in 8 VAC 20-81-320.
	1 Cit (1)	Opposes elimination of severe disabilities category and believes this will force these students to be mixed with MR students in a catch-all class for all students with IQs below 70.	
	6 AO 2Att 9 Cit 1 EO 1 LAC 1 MD 28 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu (53)	Oppose the deletion of the term and suggest that it is important to include because of the nature and severity of children with this disability and suggest that this “class of children” not be excluded.	
	1 Adv 1 Par (2)	Oppose changes to the definition of severe disabilities and suggest that it should remain the same.	
	1 Par (1)	Opposes the removal of the definition of severe disabilities, particularly given that it is still included in 20-81-320.	
Definitions – Social Work Services in Schools 8 VAC 20-81-10 (26 comments)	2 Cit 2 LEA Gen 1 Prin 1 Psy 1 Sped Tch 16 SW (23)	Suggest that the regulations need to reflect the critical role of the social worker in the eligibility process. Social workers conduct student and family assessments that are critical to the special education evaluation process such as socio-cultural and adaptive behavior assessments.	VDOE recognizes that in many school divisions, school social workers have broader authority/roles than the federal definition, such as conducting assessments and interpreting their results, because Medicaid reimbursement rules permit LEAs to use school social workers in a broader sense. Therefore, VDOE will recommend additional language be added to this provision.
	1 AO (1)	Suggests revisions to include roles of the social worker such as: conduct in-home structured socio-cultural histories; administer, score, and interpret social adaptive behavior instruments; provide intervention and prevention services; and provide case management services for initial and triennial evaluations.	

Issue	Source	Comments	VDOE Response
	1 SW (1)	Suggests that regulations specify the role of social workers to include serving as a liaison between school, home, community; serve on the school's multi-disciplinary team; provide intervention and prevention; provide academic instructional problem solving; conduct academic and behavioral observations; assist in the development of BIPs; provide initial evaluation for case management; conduct assessments; interpret social adaptive behavior measures; provide individual and small group counseling; provide crisis support; provide professional development opportunities; assist with truancy problems; collaborate with community service organizations.	
	1 SW (1)	Suggests describing the components of a socio-cultural report to include: develop a comprehensive socio-cultural assessment that focuses on the student's prenatal, developmental, medical, educational histories; adaptive behavior, and community family functioning. Also add obtaining, integrating and interpreting information about child behavior and conditions related to learning and consulting with parents, school staff, community service providers and other stakeholders to improve a student's school performance and adjustment.	
Definitions - Special Education Hearing Officer 8 VAC 20-81-10 (104 Comments)	3 Adv 11 AO 3 Att 23 Cit 1 EO 1 LAC 1 MD 54 Par 1 PO 2 PT 2 SLP 1 Sped Tch 1 Stu (104)	Oppose the use of the term special education officer and supports the continued use of Impartial Hearing Officer.	The term distinguishes these hearing officers from those who hear cases from other state agencies in Virginia. VDOE will recommend retaining the word "impartial" for clarity.
Definitions/Eligibility - Specific Learning Disability	1 Sped Adm (1)	Opposes defining dyslexia when other specific learning disabilities are not defined.	Dyslexia is specifically included in the federal definition and was expanded in the proposed regulations to clarify the meaning of the term. It is included to clarify the meaning of specific learning

Issue	Source	Comments	VDOE Response
8 VAC 20-81-10 8 VAC 20-81-80 K. (105 comments)	1 PRC (1)	Opposes the use of the severe discrepancy model.	disability without diminishing the importance of other specific learning disabilities. In accordance with federal regulations, the definition of a learning disability no longer requires the use of a discrepancy model but it does not prohibit this approach. VDOE is providing training throughout the state on the use of Response to Intervention as an alternative to using a discrepancy approach. Additional clarification will be made available through technical assistance following the statewide training on Response to Intervention methods.
	2 Sped Adm (2)	Support IDEA 2004 statement, "that the state education agency must not require the use of a severe discrepancy model; must permit the use of a process based on the child's response to scientific, research-based intervention; and, may permit the use of other alternative research-based procedures."	
	1 Sped Adm (1)	Suggests that eligibility criteria for students suspected of having an SLD needs clarification. The application of those included is unclear.	
	4 AO 2 Att 1 Cit 1 EO 1 LAC 13 Par 1 PO 1 SLP 1 Sped Tch 1 Sup (26)	Oppose the added language in the proposed regulations that references dyslexia because it conflicts with the original definition which describes a disorder in one or more of the basic psychological processes.	
	3 Adv 6 AO 3 Att 13 Cit 1 MD 26 Par 1 PT 2 Stu (55)	Suggest removing from the proposed definition references to dyslexia. This would improperly narrow the requirements, is absent from federal law, and may result in the denial of eligibility to students who have the right under IDEA and federal requirements.	
	1 LEA 1 Sped Adm 1 Cit (3)	Oppose the inclusion of an explanation of dyslexia as unnecessary and should be removed.	
	1 AO (1)	Oppose the definition which describes dyslexia, and assert that the proposed definition is too limiting and violates the federal minimum baseline because it adds additional criteria that do not exist in the federal regulations. Assert that this definition could exclude students with dyslexia when use of the federal regulations would not.	

Issue	Source	Comments	VDOE Response
	2 AO 1 Att 3 Par (6)	Opposes additional eligibility criteria.	
	1 Psy (1)	Opposes the proposed language that would eliminate the measures of individual intellectual ability when determining if students are eligible for SLD because intellectual measures provide consistent norms and measures of ability and provide information of how children learn through various cognitive areas.	
	1 Par (1)	Suggests maintaining age requirements for when determining learning disabled.	
	1 Par (1)	Suggests the need for improvements in identification process of students with dysgraphia as the writing difficulties may be either language based or grapho-motoric based to eliminate the assumption that the students are not working hard enough to do their work when there is clear etiology.	
	1 AO 1 Sped Adm (2)	Oppose the expanded definition of dyslexia as the other disabilities are not as specifically defined. Propose the deletion of the paragraph containing the definition of dyslexia.	
	1 Par (1)	Suggests that language from the federal regulations be included that specifies, "(1) data that demonstrate that prior to or as part of the referral process, the child was provided with appropriate instruction in regular education setting, delivered by qualified personnel; and (2) data-driven documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.	
	1 Adv (1)	Opposes the language that states, "Dyslexia is distinguished from other learning disabilities due to its weakness" This does not define SLD, but rather describes an unproven process for the remediation of only a few disorders defined by the traditional definition of SLD. Focusing on phonological awareness will result in a loss of needed services for children that require special education and related services.	
	1 Psy (1)	Suggests the definition of dyslexia be added to the proposed regulations.	
	1 Con (1)	Supports the addition of dyslexia to the definition of SLD but suggests clarifying difficulties with overall reading fluency, not just word recognition as a secondary consequence of dyslexia.	
Definitions/Eligibility –	1 AO	Opposes additional eligibility criteria.	To ensure greater consistency in the identification of students

Issue	Source	Comments	VDOE Response
Speech or Language Impairment 8 VAC 20-81-80 R. (54 comments)	(1) 6 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 28 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu (53)	Opposes the use of criteria beyond federal definition and suggests that LEAs are not medical professionals.	with disabilities among LEAs, eligibility criteria were included. The criteria do not require the LEAs to make a medical diagnosis; rather, criteria are included to assist the LEA to identify a student with a disability covered under IDEA who requires special education and related services.
Definitions – Supplementary Aids and Services 8 VAC 20-81-10 (54 comments)	3 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (54)	Suggest adding the following language, “Supplementary aids and services include, but is not limited to: providing preferential seating; frequent breaks; extended or additional testing time; allowing tests to be dictated; a functional behavioral assessment and behavioral intervention plan; one-to-one aides; and interpreting services to students with disabilities.” Including a non-exhaustive list of examples gives guidance to schools and parents regarding the types of services that may be provided. It also brings the definition in line with the definition of related services, which has long included a non-exhaustive list of examples.	Since supplementary aids and services vary and are not intended to be a menu of selections, it is inappropriate to add the suggested language. It is the responsibility of the IEP team to determine what the child requires for supplementary aids and services in order to meet the child’s educational needs.
Definitions – Timely Manner 8 VAC 20-81-10 (54 comments)	3 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (54)	Suggest deleting the phrase “the requirement for the National Instructional Materials Accessibility Standard” and referencing instead 8 VAC 20-81-230K since timely manner should not be limited to the use of NIMAS but tied to the provision of proper instructional materials at the same time as other children regardless of what agency is contracted or method the LEA adopts. Some needed materials may not be available through NIMAS.	This language is consistent with the federal regulations. It is the responsibility of the LEA to ensure that students have the materials needed.
Definitions/Eligibility – Traumatic Brain Injury 8 VAC 20-81-10 (3 comments)	2 Sped Adm 1 Sup (3)	Opposes the removal of the phrase, “. . . adverse effect of educational performance in the areas of . . . “ This is not consistent with other regulatory definitions as its inclusion provides clarity and lessens the likelihood of misinterpretations.	VDOE will recommend including language indicating an adverse effect on educational performance.

Issue	Source	Comments	VDOE Response
Definitions - Unreasonable 8 VAC 20-81-10 (1 comment)	1 Par (1)	Suggests including a definition for clarification.	As with the suggestion for reasonable, unreasonable is based on the circumstance and cannot be defined for these regulations.
Definitions /Eligibility – Visual Impairment 8 VAC 20-81-10 (56 comments)	6 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 28 Par 1 PO 1 PT 1 SLP 2 Sped Tch 1 Stu (54)	Oppose the use of criteria beyond the federal definition and suggest that LEAs are not medical professionals.	To ensure greater consistency in the identification of students with disabilities among LEAs, eligibility criteria were included. The criteria do not require the LEAs to make a medical diagnosis; rather, criteria are included to assist the LEA to identify a student with a disability covered under IDEA who requires special education and related services.
	1 Sped Adm (1)	Supports the level of specificity now included in the proposed definition.	
	1 Par (1)	Opposes the limitation to defining as a visual acuity since it would create a situation where children will not get the services that they need to be able to access and function within the general education curriculum.	
Functions of VDOE – General 8 VAC 20-81-20 (329 comments)	1 Sped Adm (1)	Suggests that VDOE maintain the current date for child count reporting. Further suggests that earlier reporting (between October 1 and December 1) is a concern since school doesn't begin until after Labor Day.	The proposed provisions are consistent with the 2006 federal implementing regulations. VDOE will recommend the date for child count data be a date certain to be determined by the Superintendent of Public Instruction or designee within the federal timeframes.
	1 AO (1)	No change is recommended for 6.b. which requires DOE to ensure that each local educational program for children with disabilities administered in Virginia meets the educational standards of the Virginia Department of Education. In carrying out these requirements with respect to homeless children, the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 USC § 11431 et seq.) are met.	Requirements of the McKinney-Vento Homeless Act are included as outlined in IDEA and its federal implementing regulations to ensure that homeless children with disabilities are appropriately located, evaluated, identified, and served.
	1 AO (1)	No change is recommended for 15. A. (5) which requires representation on the state special education advisory committee of state and local education officials, including officials who carry out activities under subtitle B of title VII of the McKinney-Vento Homeless Act (42 USC § 11431 et seq).	VDOE will recommend to the BOE that 1.e. will read “Are receiving special education and related services . . .” The commenter is correct in pointing out that special education and related services are services and not a location. The proposed regulations are consistent with federal

Issue	Source	Comments	VDOE Response
	1 AO (1)	No change is recommended for 23 which implies that data will be disaggregated to count students receiving special education who are homeless.	requirements for submission of information to VDOE for the annual plan. VDOE does not believe it is necessary to collect and approve local policies and procedures since LEAs are required to comply with all state and federal requirements and they are monitored through complaints, due process hearings, and VDOE's federal monitoring activities.
	3 Adv 3 Att 11 AO 14 Cit 1 EO 1 LAC 1 MD 38 Par 1 PO 1 PT 1 SLP 1 Sped Tch 2 Stu (78)	Suggest that the language in 1.e. should read, "Receive or need special education and related services" – not "Are in special education and related services."	VDOE does not believe additional language is necessary to further define the requirements that LEAs have to ensure appropriate services are available. Through its monitoring and enforcement responsibilities, however, VDOE continues to review state-wide data, and to provide technical assistance to LEAs, as appropriate to ensure that students are appropriately placed and that such programs will prepare students for post-secondary activities. VDOE's monitoring and enforcement responsibilities are in compliance with IDEA and its federal implementing regulations.
	1 Stu (1)	Supports VDOE ensuring that ED programs prepare students for graduation and college.	SOL and other standardized assessments may not be modified to ensure the integrity of the tests but may be administered with accommodations. Alternate assessments would provide the necessary modifications that may be needed.
	1 Stu (1)	Supports VDOE ensuring that African American students are not put in ED programs when other programs will serve them better.	The proposed regulations are consistent with the federal requirements regarding staff training requirements. VDOE does not believe further state regulatory requirements are necessary. However, localities, depending on locally identified needs, should continue to provide appropriate ongoing training and supervision to its staff.
	1 Sped Adm (1)	Supports removal of the provision that requires LEAs to submit copies of their policies and procedures to VDOE for approval as it will save time and the cost of postage.	In accordance with the federal regulations, and as outlined in 8 VAC 20-81-20 11 b., VDOE will continue to operate Virginia's state complaint system.
	3 Adv 6 AO 2 Att 13 Cit 1 MD 23 Par 1 PT 1 SLP 2 Stu (52)	Suggest amending 15.b.(6) to require that the Annual Plan include "new or amendments to policies and procedures for the provision of special education and related services". This will ensure procedural changes are appropriately crafted.	VDOE believes that local school divisions should be responsible for incentives for LEA personnel who demonstrate leadership in special education. VDOE agrees with the comment to 5. and will recommend to the BOE insertion of the recommended language in this provision.
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par	Suggest retaining current language in 22. "including submission of revised policies and procedures for provision of special education and related services."	

Issue	Source	Comments	VDOE Response
	1 PT 1 SLP 2 Stu (53)		
	6 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 28 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu (53)	Insert into 5., regarding the requirement that LEAs take steps for children with disabilities to have available a variety of programs and services that are available to children without disabilities, the words, "area served by the" to ensure consistency with the federal regulations.	
	3 Adv 3 Att 11 AO 14 Cit 1 EO 1 LAC 1 MD 38 Par 1 PO 1 PT 1 SLP 1 Sped Tch 2 Stu (78)	Under 4., the word "modifications" is deleted and should be kept to ensure that IEPs include modifications for assessments to assist children in taking assessments and progress toward goals.	
	1 Att 1 Par (2)	Support deleting provision 8 VAC 20-81-20 11. b. for consistency.	
	1 Par (1)	Supports strengthening VDOE's monitoring, enforcement and accountability responsibilities to ensure compliance with current regulations.	
	1 Par (1)	Suggests the requirement for a tracking system that ensures that teachers and paraprofessionals are trained and meet qualifications to include highly qualified status; include on-going training.	

Issue	Source	Comments	VDOE Response
	3 Par (3)	Support requiring ongoing training for LEA personnel involved in the supervision and education of children with disabilities.	
	1 EO (1)	Recommends providing incentives to those doing what is right in their systems.	
Accountability for Instruction – Assessments – General 8-VAC-20-81-20 (43 comments)	1 Att (1)	Suggests that the words, "participate in" be added to the definition of Alternate Assessment.	<p>Federal regulations require that the IEP team make decisions about accountability, requiring that all students participate in the regular state tests unless they have significant cognitive disabilities and are unable to participate in statewide Standards of Learning testing, even with accommodations.</p> <p>Similarly, IEP teams are responsible for determining how a student's progress will be monitored. Therefore additional regulatory requirements are not necessary regarding the provision of educational benefit.</p> <p>The proposed regulations are consistent with the federal requirements regarding VAAP and the need to document the decision in the IEP. VDOE does not believe further regulatory requirements are necessary.</p> <p>The Board of Education recognizes the importance of placing increased emphasis on student achievement and school accountability and has included language to this effect in the development of the proposed special education regulations.</p> <p>VDOE recognizes the importance of ensuring accountability for instruction and maintaining appropriate assessment tools that comply with the requirements of USDOE. However, VDOE does not believe additional clarification regarding this issue is required in this set of regulations.</p>
	1 Sped Adm (1)	Opposes the way that the VAAP is administered. The VAAP "continues to be a dog and pony show," with the ASOLs often irrelevant to the student's IEP goals/objectives and the student's transition needs. It does not allow for demonstration of collaborative efforts over the course of a student's education, for example, by not allowing the use of materials from the 9th & 10th grade, even if potentially great assessment material.	
	2 LEA Gen 12 Prin 9 Sped Adm 11 Sped Tch 1 Sw (35)	Support proposed regulations, as written, because they focus on improving student achievement.	
	1 AO (1)	Supports improving communication with LEAs regarding SOLs (VSEP, VGLA), and for ensuing appropriate ways to identify students with disabilities who are passing.	
	1 Par (1)	Recommends that Virginia require LEAs to provide meaningful educational benefit that is real and measurable, instead of using general education classroom grades or passing from grade to grade as a measurement of IEP goals.	
	1 Par (1)	Suggests another alternative for assessment would be "to use normed based testing to determine if the intervention/instruction is working and each student, cognitively able, is making progress, when appropriate SOLs are failed."	
	1 Par (1)	Suggests that a student should not be expected to take any test that is 2 years or more above their ability level unless there is "overwhelming evidence" that the child could pass the test. It creates esteem issues.	
	1 AO	Suggests clarifying language about alternative ways to earn verified credit.	

Issue	Source	Comments	VDOE Response
	(1)		
	1 AO (1)	Suggests informing parents of the alternate assessment. Students who do not participate in the general education curriculum are failing regular SOL tests, creating a situation where they drop out of schools, or keeping the school from making AYP.	
Responsibilities of LEAs and SOPs – General 8 VAC 20-81-30 (58 comments)	6 AO 13 Cit 1 MD 25 Par 2 Att 1 PT 3 Adv 1 SLP 2 Stu (54)	Support proposed language in 20-81-30 in its entirety.	Language in this section incorporates both state and federal requirements. VDOE does not believe additional clarification is needed regarding non-educational placements since this section does not address parental placements and reflects the responsibilities of LEAs. However, VDOE agrees with the comments related to the LEA's responsibility for FAPE for children placed for non-educational reasons in an SOP as a long-term placement. VDOE will recommend additional language in this regard.
	1 Att (1)	Suggests clarifying that non-educational placements do not include parentally made placements and only include public agency placements.	
	1 VDOE (1)	Suggests that the proposed regulations distinguish that children in long-term placements will have FAPE ensured by their LEA.	
	1 VDOE (1)	Suggest deleting the words, “unless the child is in a state-operated program” under 20-80-40, 10.	
	1 VDOE (1)	Suggests that the LEA of custodial parents’ residence be required to work with the SOP when a student has been placed by the parent long-term similar to a nursing home placement. Supports having students in long-term placements being treated as all other students with long-term nursing placements.	
Residency (Which LEA is responsible for FAPE?) 8 VAC 20-81-30 (2 comments)	1 Sped Adm (1)	Supports the added clarification related to residency included in the proposed regulations.	The regulations combine requirements from various sections of the <i>Code of Virginia</i> and efforts were made to clarify which LEA is responsible for the education of students in various situations. VDOE disagrees with the recommended language change. School divisions responsible for children who are homeless in other school divisions but wanting to remain in their school of origin will create an administrative and fiscal burden on those school divisions. Children who are homeless should receive services as proximate to where they are located.
	1 AO (1)	Suggests adding into 8 VAC 20-81-30 B.2., the following language: “Children with disabilities who are homeless, including students remaining in their school of origin, in accordance with the provisions of the McKinney-Vento Homeless Assistance Act.” This will clarify that homeless students may remain in their school of origin, even when across school division lines, if in the student’s best interest.	
Staffing Requirements –	1 Gen Ed	Suggests that classes with students with moderate and severe disabilities be	VDOE does not believe further clarification is needed related to

Issue	Source	Comments	VDOE Response
Caseloads 8 VAC 20-81-40 A. 3. (224 comments)	(1)	required to have paraprofessionals in order to be able meet the needs of students with disabilities such as autism, emotional disturbance, mental retardation, etc. Also suggests that students with varied level of needs (Level 1 & Level 2) need more than one teacher in a classroom to meet their needs.	the use of “similar” and “varying”.
	1 Gen Ed (1)	Suggests that general education classes with included special education students have limits established for the number of students with disabilities that can be included.	In light of the comments received, VDOE recognizes that there may need to be a review and possible revision to the staffing ratios outlined in Appendix A, and will recommend such to the Board.
	1 Gen Ed (1)	Suggests that caseloads should not be based on real pupil teacher ratios or building averages that allow huge inequities and do not meet the needs of students with disabilities.	VDOE will recommend deletion of “severe disabilities” since this category is not included in the federal definitions.
	1 AO 1 Gen ed 1 LEA Gen 1 Par 1 PO 1 SLP 2 Sped Tch (8)	Suggest defining “similar” and “varying” achievement levels when setting limits for students in a single class period.	The proposed regulations are consistent with the federal requirements regarding staff training requirements. VDOE does not believe further state regulatory requirements are necessary. However, localities, depending on locally identified needs, should continue to provide appropriate ongoing training and supervision to its staff.
	1 Sped Adm (1)	Suggests deleting caseloads for students with Severe Disabilities since SD is no longer included.	Figure A of the 2002 Virginia Regulations has been deleted. Its intent was to align the special education regulations with regulations relative to teacher education and licensure. With the revision of those regulations, the information contained in Figure A was no longer accurate.
	1 Sped Adm (1)	Suggests caseloads using the Level I and II criteria in terms of services not location. Some thought needs to be given to the increased cost of educating children in the LRE.	
	1 Sped Adm (1)	Suggests caseloads of 40 for SLPs since they have Medicaid paperwork, and lower caseloads would help with retention of SLPs.	
	1 Sped Adm (1)	Supports decrease in caseloads for sped teachers in inclusion and co-teaching situations of no more than 16-18 students.	
	1 Sped Adm (1)	Supports a higher number of paraprofessional staff than indicated to provide support and services for students with significant disabilities in the general education classroom.	
	3 Adv 6 AO 2 Att 13 Cit	Suggest changing Figure A, and Appendices 1 & 2 to include DD caseloads for children through age nine.	

Issue	Source	Comments	VDOE Response
	1 MD 24 Par 1 PT 1 SLP 2 Stu (53)		
	1 Sped Adm (1)	Suggests adding level II numbers for DD children ages 2-5 since there is a current movement for more time with non-disabled peers.	
	1 Sped Tch (1)	Opposes changes to preschool special education caseloads that would increase the caseloads.	
	1 AO 1 Adv 4 Cit 8 Par (14)	Oppose the proposed teacher-student ratio for Autism of 6:1 for teacher and 1 paraprofessional for every 8 children.	
	1 Sped Tch (1)	Opposes current caseload requirements and suggests a weighted system with no more than 14 weights in accordance with Appendix A, that similar and varying achievement levels be redefined, and that inclusive classes have no more than 10 student weights included.	
	1 AO 1 Att 1 Par (3)	Suggest changes to the caseload standards and that the Board move forward to make changes via the legislative process as soon as possible.	
	2 AO 1 Att 1 LEA Gen 2 Par 1 PO 3 Sped Tch 1 SLP (11)	Suggest that language be included to address caseloads in inclusive settings since no current language is included. Suggest no more than 10 weights (as defined in Figure 2 of Appendix A) be allowed in general education classes for inclusive placements when there is only one teacher. Suggest no more than 12 weights be allowed in an inclusive setting when two teachers (one of which is a certified sped teacher in the class for at least 75% of the time) are assigned to the classroom.	
	2 AO 1 Att 1 LEA Gen 3 Par 1 PO 1 SLP 2 Sped Tch	Suggest that weights be used rather than the number of students to identify caseloads and the number of students assigned to a single class period so that 14 weights would be used for similar achievement levels and 10 weights would be used for a group with varying achievement levels. Similar would mean within 2 grade levels of each other and varying would mean differences of more than 2 grade levels. Suggest also that similar achievement level be defined in the regulations to minimize varying practices among LEAs.	

Issue	Source	Comments	VDOE Response
	(11)		
	1 Par (1)	Concerned about student-teacher ratio being 15 to 1.	
	1 Par (1)	Supports the inclusion in Appendix A of a Level III category for students who need intensive 1:1 intervention outside of the general or special education class to prepare them to be included with typical peers in the regular class.	
	1 Guid 1 Sped Tch (2)	Support staffing values associated with Appendix A.	
	1 Par (1)	Supports clarifying the meaning of “collaborative inclusion and mainstream classrooms.” It is not understood the amount of time that a trained special education teacher should be in the classroom for the time stated on the IEP.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support the proposed regulation at A. 1. (a) indicating that students with disabilities shall be instructed with students without disabilities. This adds clarity on instruction in the general education classroom setting.	

Issue	Source	Comments	VDOE Response
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support the proposed regulation at A. 2. (b) relating to high qualified teachers in one or more federal core areas. This aligns with federal regulations and supports commensurate teaching standards for children with disabilities.	
	1 Par (1)	Supports requiring disability-specific training for aides/paras with the training specific to the student that the aide/para is working with.	
	1 Par (1)	Opposes removal of endorsement by disability in Section 40.	
Staffing Requirements - General (except length of day) 8 VAC 20-81-40 (3 comments)	1 Cit (1)	Suggests that categories no longer used in the definitions should be removed from the staffing table for staff to student ratios.	VDOE will recommend to the BOE the deletion of the category "severe disabilities", because the federal regulations no longer use the term and it is not required for accounting purposes.
	1 Gen Ed (1)	Suggests defining "knowledgeable" as it pertains to general education personnel who may implement special education services.	The term, "knowledgeable," is the language used in the federal regulations and is based on the specific student and situation.
	1 Par (1)	Opposes proposed wording of "indirect services" because of a potential to dilute, diminish or compromise the delivery of special education services under an IEP.	The description of special education services as including both direct and indirect services is consistent with the federal regulations and guidance from USDOE.
Staffing Requirements – Highly Qualified 8 VAC 20-81-40 (2 comments)	2 Cit (2)	Support the proposed regulations that eliminates separate teacher licensure requirements for MR, ED, and LD.	The Board made this change to comply with revisions to the regulations regarding teacher education and licensure.
Staffing Requirements – Interpreters 8 VAC 20-81-40 E. (134 comments)	10 Int (10)	Support the use of EIPA as a valid test for qualifying educational interpreters. It is reliable and is the assessment in more than 25 states.	Local School Boards determine salaries based on a number of factors including demand, resources and competing LEAs. The Board of Education, therefore, desires not to be any more prescriptive in this area. EIPA was suggested as an alternative for Educational Interpreters based on recommendations from public comment during NOIRA. Providing this as an option allows greater flexibility for interpreters to demonstrate their level of
	1 IHE 1 Indiv 2 Int (4)	Oppose the use of EIPA as a qualification for educational interpreters.	

Issue	Source	Comments	VDOE Response
	1 Sped Adm (1)	Suggests that the state provide financial support to offer salaries that will result in interest in these positions. Suggests that increased requirements will result in difficulties hiring qualified interpreters.	<p>competency.</p> <p>Federal regulations (§ 300.156) do not allow a waiver process. LEAs may need to review their recruitment procedures and salary scales for interpreters.</p> <p>The proposed regulations require a passing score on the EIPA written test as well as sets minimum scores on the EIPA performance test. Other requirements will be reviewed for possible inclusion.</p> <p>VDOE recognizes that given the shortage of interpreters in the field that a “phase-in” period for the new requirements may be necessary, such that they will not be immediately effective. VDOE will recommend this to the Board.</p>
	4 Int 1 Par 2 Sped Adm (7)	Oppose removing the waiver process for sign language interpreters because until the pool of qualified interpreters increases, removal of the waiver process will burden school divisions by causing non-compliance and possible litigation. As long as interpreters are showing constant improvement, waivers are necessary.	
	1 VDOE (1)	Suggests including a passing score on the EIPA written test along with a minimum of Level 3.5 on the EIPA performance test along with other specific requirements including those to go in effect in 2010.	
	1 Int (1)	Agrees that educational interpreters need to be highly qualified and professional.	
	1 Int (1)	Concerned that the Cued Language Translators recruited and trained by LEAs using VDOE resources during the school year with the requirement that an individual already be an EI. If the proposed regulations are passed, this will lead to a shortage of Cued Language Translators. Proposes instituting a 3 year window to allow an individual to obtain VQAS Level III.	
	3 Int 1 Par (4)	Concerned that VQAS is considered the first option in the proposed regulations: It is a screening/diagnostic tool, not a certification of an interpreter's skills. It is geared toward community interpreting, not education. There is a version of the VQAS performance assessment that "does not meet the standards." The VQAS gives 3 scores, but it is the lowest of the 3 that is considered the score attained.	
	3 Int (3)	Support the inclusion of requirements regarding continuing education classes.	
	2 Int (2)	Support allowing 3 years to attain a VQAS Level III/transliteration skills certificate from TEC Unit/RID certification/EIPA 3.5	
	1 Int (1)	If an interpreter participates in training during a year period prior to taking the certification test, if an appropriate score is not obtained, then a waiver should not be granted.	
	1 Int (1)	Supports limiting language modes to ASL or PSE.	
	1 Int (1)	Supports including timelines for requiring existing interpreters to meet the same standards as newly hired interpreters.	

Issue	Source	Comments	VDOE Response
	1 Int (1)	Supports the inclusion of enforcement/accountability mechanisms in the regulations.	
	3 Int 1 Par (4)	Oppose the requirement that an interpreter achieve Level III within 1 year since 1 year is not usually enough time to become proficient enough to take the test. VDDHH encourages candidates to wait at least 1 year before retaking any part of the assessment, in part, to develop their skills. Support instead a 3 year requirement to pass a VQAS Level III, EIPA 3.5 or RID test.	
	3 Int 1 Par (4)	Oppose the use of the "TEC Unit": It is "virtually inaccessible and very hard to pass." It requires a minimum of 6-8 people to come to Virginia to take the test. It requires about 1 year of intense workshops to prepare.	
	1 Int (1)	Strongly supports the proposed change regarding the certification of interpreters for the Deaf and Hard of Hearing.	
	3 Int 1 Par (4)	Suggest that many of Virginia's required evaluations for educational interpreters are not appropriate assessments of the skills of educational interpreters since RID tests are expensive and geared to community interpreting.	
	3 Int 1 Par (4)	Support permitting the EIPA test for cued language, which will be ready by the end of 2008, to be considered a qualification option for cued language transliterators.	
	3 Int 1 Par (4)	Oppose the requirement that a sign language interpreter in a LEA have a VQAS II before beginning work. Interpreters from other states or coming out of Interpreter training programs do not usually have access to one of the required tests, making them unable to work in Virginia.	
	2 Int (2)	Support using the national certification test as a requirement for all interpreters. It is a generalist test that qualifies interpreters to work for any age group and with any modality.	
	1 Int (1)	Supports the following provisional standards: employees must be hired at EPI level 3.0 for a period of no more than 1 year and employees may be hired with VQAS level 3 or EIQA 4.0 level with credentials in the language modality used by child.	
	1 Cit	Oppose making Level 3 mandatory when so many interpreters are capable of	

Issue	Source	Comments	VDOE Response
	14 Int 2 Par 1 Sped Adm 1 Sped Tch (19)	success without Level 3. Not permitting interpreters to be hired who do not meet this requirement will result in severe shortages in a profession where there is a scarcity.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support the proposed interpreter standards, as written.	
Staffing Requirements – VI Teachers 8 VAC 20-81-40 (57comments)	1 AO 5 Cit 2 DBVI 16 Par 3 Sped Tch (27)	Suggest that Appendix A include a caseload requirement for teachers of students with visual impairments.	Caseload requirements are based on the state's funding formula; they cannot be revised outside of the funding mechanism. The Board of Education believes that DBVI is the appropriate state agency to administer and provide oversight regarding state funding for VI teachers. Therefore, it declines to pursue a transition of this authority to VDOE. VDOE does not believe that additional clarifications are necessary.
	2 Cit 2 DBVI 5 Par 1 Sped Tch (10)	Support including state funding for VI teachers under the SOQs. VI is the only special education category for which there is no maximum instructional caseload set and funded by the SOQs.	
	2 Par (2)	Support lowering the caseloads for VI teachers since too high a caseload creates a situation where services are not provided appropriately.	
	2 DBVI 4 Par 1 Sped Tch (7)	Support striking the following language from proposed regulation 8 VAC 20-81-40 A. 3. a., and 8 VAC 20-81-40 B. 2. c.: "Special education services for children with visual impairment are established, maintained, and operated jointly by the local school board and the Virginia Department for the Blind and Vision Impaired." The Code of Virginia does not grant either local school boards or DBVI the authority to determine maximum instructional caseloads.	
	2 DBVI 2 Cit 6 Par 1 Sped Tch (9)	Support transferring the responsibility for the administration of state funds that support teachers of the visually impaired from DBVI to VDOE.	

Issue	Source	Comments	VDOE Response
Child Find (includes screenings or public awareness) 8 VAC 20-81-50 (161 comments)	3 Adm 12 Prin 1 Sped Adm 1 Sped Tch (17)	Support the proposed revision to collapse the public awareness and screening framework to a single provision and requiring LEA procedures including timelines.	<p>To provide maximum flexibility to LEAs, child find requirements were collapsed wherever feasible.</p> <p>As required by federal regulations, early intervening services cannot be used to delay a needed evaluation for a child suspected of having a disability.</p> <p>VDOE will consider the development of a technical assistance document which lists all required areas to be screened. These were removed to allow for state changes without having to amend the special education regulations.</p>
	1 Sped Adm (1)	Supports the removal of specific procedures allowing the school divisions the latitude and flexibility necessary to develop and implement procedures unique to their specific needs rather than in response to state imposed regulations which may not be easily tailored to a particular school division.	
	1 Sped Adm (1)	Supports changing the requirements for screening and the requirement for specific instruments because specific timelines for screening at the beginning of the year make service delivery cumbersome since screeners are often service providers. Additionally, students do not always respond to specific screening instruments in a manner that accurately reflects their skills.	
	6 AO 1 Att 2 Cit 1 EO 1 LAC 14 Par 1 PO 1 SLP 1 Sped Tch 1 Stu (29)	Oppose the deletion of the 60 business days to conduct screenings. Without this, LEAs would be allowed to develop their own timelines; the requirement for a specific timeline would ensure accountability for schools.	
	4 Adv 5 AO 2 Att 14 Cit 1 MD 25 Par 1 PT 2 Stu (54)	Oppose the deletion of the 60 day timeline for screening and suggests that language be included to indicate current timelines including the provision that the screening may take place up to 60 business days prior to the start of school.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 PT	Oppose the deletion that requires children to be referred to the special education administrator or designee no more than 5 business days after screening or re-screening if results suggest that a referral for special education and related services is indicated. The proposed language allows each LEA to designate their own timelines.	

Issue	Source	Comments	VDOE Response
	1 SLP 2 Stu (54)		
	1 Par (1)	Suggests that Child Find services should be audited, including the personnel conducting the screenings.	
	1 Par (1)	Opposes change in the screening requirements and suggests that parents be added to child find committees.	
	1 Sped Adm (1)	Suggests a list of the screening requirements from the <i>Code of Virginia</i> and regulations – perhaps as an appendix.	
	1 AO (1)	Supports the Child Find provisions as written in Section A.	
	1 AO (1)	Supports the provision ensuring no delay in an evaluation due to early intervening services.	
Child Study Teams 8 VAC 20-81-50 D. (977 comments) 0	3 Adm 12 Prin 2 Sped Adm 1 Sped Tch (18)	Support the proposed removal of Child Study Committee requirements and allowing schools the flexibility of developing their own procedures.	<p>Although the Child Study Committee requirement is a longstanding Virginia-specific provision, the Board deleted the requirement for Child Study Committees to allow maximum flexibility for LEAs to develop their own procedures and timelines, including the use of research-based strategies and Response to Intervention.</p> <p>The proposed revision mandates the basic framework required for local policies and procedures to ensure children are properly screened and educational needs are identified and addressed. This basic framework includes timelines and inclusion of parents in the process. This mandated framework provides sufficient protections for children. The local policies and procedures would be subject to VDOE review through the systems of federal program monitoring, complaints, and the Annual Plan review. In response to the comments, VDOE will recommend additional provisions that expand this basic framework and clarify the school division's responsibilities in this regard.</p> <p>Local procedures would be required to address the local referral process which must include parental involvement in the process. Additionally, parents, due to the nature of the need for parent consent for an evaluation, would be a part of the process.</p>
	1 Sped Adm (1)	Supports proposed changes to the child study process because students in the child study process are not identified as students with disabilities and Child Study should be in the general education realm.	
	1 SSEAC (1)	Supports the proposal to eliminate Child Study Teams but suggests that the regulations stipulate that the LEA must establish and follow procedures developed in accordance with the regulatory language.	
	1 Adv 5 Cit 1 CSB 2 EO 15 Par (24)	Oppose the elimination of Child Study Committees.	

Issue	Source	Comments	VDOE Response
	3 Adv 5 AO 1 Att 5 Cit 9 Par 1 Stu (24)	Oppose the proposed elimination of Child Study Teams. By leaving it up to each LEA to designate procedures to handle referrals, there will be no uniformity among LEAs.	
	1 Cit 2 Par (3)	Oppose the elimination of Child Study Committees because they serve an important role in supporting students and determining eligibility.	
	1 Par (1)	Opposes the elimination of the Child Study process and the requirement, instead, that children participate in RTI.	
	13 Adv 22 AO 3 Att 605 Cit 1 EO 2 Int 2 LAC 1 LEA Gen 1 MD 1 OT 170 Par 2 Psy 2 PT 3 PTA 3 SLP 3 Sped Tch 1 Sped Adm 4 Stu (839)	Oppose elimination of Child Study Committees, thus removing such aspects as consistency in the referral process across LEAs, parental involvement, the protection of timelines and the requirement that classroom interventions not delay the evaluation.	
	8 AO 3 Att 3 Cit 2 EO 1 LAC 20- Par 1 PO 1 Sped Tch 1 Stu (40)	Oppose the deletion of Child Study Committees since it would have a negative impact on students and not allow parents to participate in the process. Consistency among LEAs will also be lost.	

Issue	Source	Comments	VDOE Response
	1 Sped Adm (1)	Concerned about possible sanctions if timelines developed locally are challenged by the community and supported by the state.	
	1 Par (1)	Opposes the removal of Child Study Team requirements since that would allow LEAs an undesignated period of time before an evaluation for services is decided upon. A referral could go unheeded for conceivably an entire school year before parental consent for the evaluation is sought.	
	1 AO 7 Cit 1 MD 13 Par 1 PT (23)	Suggest that Child Study provisions be restored as well as a definition included.	
	1 Cit (1)	Opposes parents being shut out of the referral process.	
Evaluation – Initial (except timeline or consent) 8 VAC 20-81-60 (423 comments)	3 Adv 6 AO 3 Att 20 Cit 1 EO 1 MD 1 Psy 1 PT 1 LAC 69 Par 1 Sped Tch 2 Stu (109)	Support allowing referrals for special education evaluations to come from anyone concerned about a student's need for special education services.	<p>Consistent with federal mandates, the proposed regulations continue to permit a referral to be made by any source. In addition, the referral may be made orally or in writing to ensure that parents have appropriate access to the referral process.</p> <p>The Child Study Committee was not included in these proposed regulations to give each LEA the flexibility to develop its own system, including Response to Intervention activities. Each LEA will be required to develop a system of referral to be included in their local procedures. VDOE will recommend additional provisions in 8 VAC 20-81-50 to expand the framework defining the LEA's responsibilities.</p> <p>Use of the term parent throughout the proposed regulations means those individuals defined as a parent in 20-81-10.</p>
	1 AO 1 Att 1 Par (3)	Support the proposed provision which allows for referral to be made either orally or in writing. This provision helps ensure that parental referrals, which are often oral, will be addressed.	<p>The federal regulations do not mandate a timeline for when the LEA must provide parents a copy of the evaluation report(s) which is at no cost. Virginia's special education regulations have provided that the evaluation report(s) need to be available to the parents no later than 2 business days prior to the eligibility group meeting. VDOE will recommend to the BOE additional language in 8 VAC 20-81-70 that clarifies when the LEA must provide the parents a copy of the evaluation report(s).</p> <p>It is appropriate for an LEA to request whatever evaluation information a parent has for the child. Whatever information a parent may have will add to an informed discussion and a meaningful decision by the committee.</p>
	6 Adv 17 AO 7 Att 27 Cit 1 EO 1 LAC 2 MD 65 Par	Oppose the proposal that deletes referrals from Child Study Committees and timeframes since it would have a negative impact on student and not allow parents to participate in the screening process. Consistency among LEAs will be lost. Suggest using the current language that requires a 10 day timeline for a committee to meet and make a decision along with all previous language related to the child study committee.	

Issue	Source	Comments	VDOE Response
	1 PT 2 SLP 1 Sped Tch 5 Stu (135)		<p>Permitting an LEA and parent to agree on an extension of the 65 day timeline is in accordance with federal regulations and will prevent a committee from making a decision without needed information. This can only be done with the agreement of both parties. If a parent is concerned, he or she may refuse to agree with an extension and the LEA would be required to move forward within the required 65 day timeline.</p> <p>VDOE does not believe further language in the regulations is necessary to clarify that additional evaluations not already completed can be provided to the student within the year.</p> <p>VDOE will recommend language to retain the current requirement that the 65-day timeline is triggered at the time the special education administrator receives the referral.</p> <p>VDOE will recommend retaining the 10 business day timeline for a team to meet to receive the referral and 3 business day timeline for the team to submit its referral to the special education administrator, placing these requirements in 8 VAC 20-81-50.</p>
	1 AO (1)	Suggests adding language that would require that a referral from a Child Study Committee be made within 5 business days following the determination by the committee that the child should be referred for an evaluation for special education and related services. Also suggest that the Child Study Committee report, in writing, on strategies implemented to address the child's learning, behavior, communication, or development.	
	1 AO 2 Par (3)	Oppose the timeline being initiated by parent consent. This results in a longer timeline than in the previous regulations since it begins at a later point than the point of referral.	
	1 AO 1 Att (2)	Suggest that language be added that would specify that parent consent be from someone who qualifies as a parent under 8 VAC 20-81-10 before proceeding with an initial evaluation when the child's parent cannot be located or if the parent's rights have been terminated in accordance with VA law.	
	1 AO 1 Att 1 Par (3)	Support the proposed provision which requires that a written copy of the evaluation be available to the parent no later than two business days before the meeting to determine eligibility.	
	3 Adv 11 AO 4 Att 14 Cit 1 EO 1 LAC 1 MD 39 Par 1 PO 1 PT 1 SLP 1 Sped Tch 2 Stu (80)	Oppose the proposed regulation that allows the LEA to request any evaluation information the parent may have on the child. Parents may not want to share evaluations and should be under no legal obligation to share those with the LEA.	
	3 Adv 11 AO 4 Att 15 Cit	Oppose proposal that would allow the parent and eligibility group to extend the 65 day timeline to obtain additional data, because it unnecessarily drags out the eligibility process.	

Issue	Source	Comments	VDOE Response
	1 EO 1 LAC 1 MD 40 Par 1 PO 1 PT 1 Sped Tch 1 SLP 3 Stu (83)		
	1 AO 1 Att 1 Par (3)	Suggest that the regulations should specify that the LEA shall not conduct "the same evaluation" more than once a year. This would allow, for example, a psychological evaluation to be conducted and then a speech evaluation 6 months later. Suggest that some LEAs will not conduct any evaluation within one year if any evaluation has been conducted.	
	1 Par (1)	Opposes limiting the ability of foster parents and social workers from being allowed to refer children to child study. Since a child can be in foster care for up to 18 months, this could delay much needed services.	
Timeline - Evaluation/Eligibility 8 VAC 20-81-60 B. 1. g. & h. (2216 comments)	3 Adm 1 LEA 1 LEA Gen 1 Par 1 PO 12 Prin 36 Sped Adm 2 SLP 1 SOP 3 Sped Tch 1 Sup 1 SW (63)	Support the 65 business day timeline to complete eligibility but supports the timeline being triggered by the date of parent consent.	<p>Virginia has a long-standing 65 business day timeline for which there was support from public comment during NOIRA. The Board of Education maintained the 65 business day timeline in the draft regulations for evaluations, but clarified that the 65 day timeline for an evaluation was triggered by the date of parental consent for the evaluation instead of the date the special education administrator received the referral. However, VDOE will recommend retaining the current language for when the 65-day timeline is triggered.</p> <p>VDOE does not believe it is appropriate to regulate the length of time permitted for an extension. That is a decision that should be left to the parents and the LEA based on the child's unique needs.</p> <p>The timeline included in the federal regulations addresses only initial evaluations, not reevaluations or completing the process for eligibility determination.</p> <p>VDOE does not believe a timeline is required from the date of referral to the point of parental consent. A number of factors must be considered including the use of early intervening services, as well as the availability or willingness of the parent to sign consent.</p> <p>The commenter's suggested language related to the parent and</p>
	3 Cit 1 LAC 2 LEA Adm 3 Par 22 Prin 1 PRC 15 Sped Adm 22 Sped Tch 1 SSEAC 1 Sup 1 SW (72)	Support the current VDOE timeline of 65 business days for completion of an evaluation/ reevaluation and an eligibility determination. To change the timeline to 60 calendar days would have a significant personnel and financial impact on schools.	

Issue	Source	Comments	VDOE Response
	11 Adv 12 AO 1 Att 282 Cit 1 LEA Gen 1 MD 64 Par 1 PT 1 PTA 2 SLP 2 Stu (378)	Oppose the proposed 65 business day timeline and supports the federal guideline of 60 calendar days from date of parental consent for evaluation.	LEA agreement to extend the evaluation timeline is included in the proposed regulations at 8 VAC 20-81-60 B.1.g.
	1 Adv 15 AO 4 Att 339 Cit 1 Con 2 EO 2 Int 1 LAC 1 MD 1 OT 134 Par 2 PO 2 PT 1 PTA 1 SLP 4 Sped Tch 4 Stu (515)	Oppose the proposed 65 day timeline and suggests the timeline for determining eligibility not exceed the federal guideline.	
	1 Par (1)	Suggests improving on federal minimum standards by requiring that the evaluation and eligibility determination process be completed within 55 business days.	
	1 Sped Tch (1)	Suggests the use of 45 calendar days to complete testing for eligibility.	
	6 AO 2 Att 11 Cit 1 EO 2 LAC 1 LEA Gen 1 MD 29 Par 1 PO	Oppose triggering the eligibility timeline with consent rather than when the initial referral is made.	

Issue	Source	Comments	VDOE Response
	1 PT 1 SLP 1 Sped Tch 1 Stu (58)		
	1 Att 2 LEA Gen 1 Par 2 Prin 2 Sped Adm 1 Sped Tch 1 Sup (10)	Support the timeline being triggered by receipt of parental consent.	
	1 Adv 9 AO 223 Cit 2 Int 1 MD 60 Par 1 PO 1 Prin 2 PT 1 PTA 1 SLP 1 Sped Tch 2 Stu (305)	Suggest establishing a time limit between the date of referral for evaluation to the date of parent consent to ensure the LEA does not unduly extend the timeline.	
	5 Adv 13 AO 1 Att 442 Cit 2 Int 1 MD 1 OT 113 Par 1 PO 2 PT 2 PTA 3 SLP 2 Sped Tch 2 Stu (590)	Support the extension of the evaluation/eligibility timeline with parental consent for a maximum of 10 business days.	

Issue	Source	Comments	VDOE Response
	1 Sped Adm (1)	Support allowing the 65 day timeline for evaluation and eligibility to be extended in order to obtain additional data.	
	1 Att 4 Cit 4 Par 1 Sped Tch (10)	Support the extension of the evaluation/eligibility timeline only with parental consent.	
	3 Adv 1 AO 1 Att 14 Cit 1 MD 26 Par 6 PO 1 PT 2 Stu (55)	Oppose the proposal that allows an extension of the timeline for evaluations.	
	1 Par (1)	Opposes the lack of timelines for reevaluations.	
	1 Par (1)	Opposes denying parents the right to receive timely evaluations and eligibility determinations.	
	4 Adv 1 AO 116 Cit 30 Par 1 PTA 2 SLP (154)	Support the establishment of a time limit between the date of the referral for evaluation to the date of parent consent to ensure the LEA does not unduly extend the timeline.	
	1 AO (1)	Suggest adding the federal language, “if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed.” (34 CFR § 300.301(c))	
Evaluation/Reevaluation Procedures – General (except timeline, consent, or initial evaluation)	3 Par (3)	Recommend including language that would permit parents to observe in classes. Volunteers are continually allowed to observe students in class, but parents wanting to observe struggling students are met with resistance.	VDOE does not believe it is appropriate to regulate policies related to classroom observations. The development of those policies is the responsibility of local educational agencies.

Issue	Source	Comments	VDOE Response
procedures) 8 VAC 20-81-70 (280 comments)	6 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 28 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu (53)	Oppose deletion of language indicating that the group determines “whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable goals in the IEP.” Suggest that these should be considered when completing evaluations and this language is not included.	<p>Although the proposed language was included (and not deleted as suggested), it is the responsibility of the IEP team, not the eligibility group, to determine services needed by a student. It is the IEP team, which includes the parent, who determines which assessments are included in a reevaluation based on their knowledge of the student’s progress.</p> <p>It is the responsibility of the IEP team to determine whether new assessments are needed for a reevaluation. For some students, especially those with more severe cognitive disabilities, parents may not wish to have their children reevaluated formally. The IEP team should have the flexibility to decide whether a reevaluation would be useful.</p> <p>The 65 day timeline may only be extended with the agreement of both the LEA and the parent. It would be inappropriate to force a meeting if both parties agree that additional information would result in a better decision for the student.</p> <p>The purpose of the evaluation process is to determine eligibility for special education and related services which includes educational needs. The proposed language, however, does include suggested language consistent with the commenters’ suggestion pertaining to students’ present level of performance and educational needs. Evaluations provide information useful in developing the Present Level of Performance for an IEP if the child is or continues to be eligible for services. Present Level of Performance, however, also includes classroom information and other observations that may not be a part of the evaluations conducted for eligibility purposes.</p> <p>VDOE agrees that it is not useful for an IEP team to meet after a reevaluation if no changes in services are suggested by any party of the eligibility process or the IEP team.</p> <p>The proposed regulations eliminated the requirement that the start of the reevaluation occur at least 65 days prior to the 3rd anniversary as it was duplicative. LEAs are still required to complete the evaluation/eligibility process within 65 business days and the process must be completed by the 3rd anniversary. The elimination of the start timeline provides more flexibility to LEAs.</p> <p>The proposed regulations outline the required personnel who must participate in the evaluation process. However, neither the federal nor the state special education regulations would preclude additional personnel from participating in the process as determined appropriate by the LEA.</p> <p>No additional clarification is necessary.</p>
	3 Adv 11 AO 4 Att 14 Cit 1 EO 1 LAC 1 MD 40 Par 1 PO 1 PT 1 SLP 1 Sped Tch 3 Stu (82)	Oppose language that would allow the LEA and parent to agree not to evaluate every three years and determine that it is not needed. Suggest that triennial evaluations are necessary because they inform parents and the LEA about the functioning levels of the child.	
	3 Adv 3 Att 6 AO 15 Cit 1 EO 1 LAC 1 MD 38 Par 1 PO 1 PT 2 SLP 1 Sped Tch 2 Stu (75)	Oppose proposal that would allow the parent and eligibility group to extend the 65 day timeline to obtain additional data.	
	1 Sped Tch (1)	Suggests clearly specifying which disabilities require a medical diagnosis.	
	6 AO	Suggest that the evaluation/reevaluation process include language that requires	

Issue	Source	Comments	VDOE Response
	2 Att 9 Cit 1 EO 1 LAC 1 MD 30 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu (55)	the process to determine the child's "present level of performance and educational needs of the child" rather than the current language, "the present educational needs of the child." The present levels are important because they allow the parents and professionals to ascertain where the child is educationally functioning.	
	1 Par (1)	Opposes denying the parent input into all evaluations and assessments, including independent FBAs.	
	1 Att (1)	Opposes the proposal to make the school divisions supply copies of the evaluation reports free of charge. This requirement is not in the current regulations.	
	1 Par (1)	Suggests that students be evaluated each year to determine if goals are being met. The evaluation should consist of valid and reliable data based on IEP goals, not curriculum based assessment that may not accurately reflect a student's progress on IEP goals.	
	1 Par (1)	Recommends the resurrection of the full triennial evaluation because parents should be asked if they would like to have norm- based testing to determine if progress on IEP goals has been made.	
	1 Sped Adm (1)	Suggests the need for clarification about the restriction of evaluations to no more than once during a calendar year and the section that discusses requirements if a team determines that additional data are not needed after a review of existing data.	
	1 Par (1)	Suggests adding language that would require a comprehensive evaluation if an LEA believes that a student no longer qualifies for a related service.	
	1 Par (1)	Suggests that a provision be added to require evaluators to include recommendations of strategies, methodologies, accommodations, or other supports that would address the child's needs.	
	1 Par (1)	Suggests that the regulations include a provision that would require evaluation reports to include all scores for evaluations administered, including those of subtests since they are not always included and then may be lost.	

Issue	Source	Comments	VDOE Response
	1 Par (1)	Suggests that there is an increase in outside evaluations for eligibility which have concerns connected with them such as timelines, paperwork, transportation, use of insurance/Medicaid, etc. and that this situation need to be addressed in the regulations along with a definition for "outside evaluation."	
	1 Sped Adm (1)	Supports the elimination of the current requirement that a reevaluation be initiated 65 business days prior to the triennial date.	
	1 Par (1)	Suggests requiring triennial evaluation to be held every three years. Although these conferences can be time-consuming, they bring parents and school personnel together and greatly benefit the child. Proposed change would make it very easy to keep the status quo going to the child's detriment.	
Consent -- Evaluation/Reevaluation 8 VAC 20-81-60 B.2. 8 VAC 20-81-70 G. 8 VAC 20-81-170 E.1.a., E.4.a., and E.5. a. & b. (3 comments)	1 Sped Adm (1)	Supports proposed provision allowing routine observations without parental consent. Requiring parent consent on a routine observation places undue burden on the child and school when a parent fails to give consent or does not respond to the request. The LEA, however, must provide an observation and documentation of the child's academic performance and behavior in the areas of difficulty to determine whether a child has an SLD.	Consistent with federal regulations, parental consent is required for initial evaluations and for reevaluations including observations if they are a part of the evaluation. The Board of Education also proposes to maintain the Virginia-specific requirement for parental consent for initial eligibility decisions and for a change in identification. Classifications used in the proposed regulations are consistent with those used in federal regulations and are used to determine eligibility for special education and related services. The specific services to be provided, however, are not based on the classification but rather by individual student need as determined by the IEP team.
	1 Sped Adm (1)	Supports the proposed requirement for consent for initial eligibility since parental involvement is essential.	
	1 Sped Adm (1)	Supports the continued requirement for parent consent for change in identification, but there should be less ambiguity of classifications. It may be better not to use classifications at all but just use special education with services determined by criteria, rather than eligibility determining services.	
Eligibility Criteria – General 8 VAC 20-81-80 (990 comments)	13 Adv 22 AO 7 Att 577 Cit 1 CSB 4 EO 2 Int 3 LAC 1 LEA 1 LEA Gen 1 OT 199 Par 2 PO 3 Psy	Oppose eligibility criteria that exceed federal requirements since that would decrease the LEA's flexibility to make individual eligibility decisions and disadvantage children who may otherwise qualify for services because they don't meet all of the requirements.	VDOE does not believe the suggested changes to criteria are necessary because the definitions listed in proposed VAC 20-81-10 provide sufficient guidance for eligibility determination for emotional disability, deaf/blind, and multiple disabilities. Criteria were included for other disabilities, because the definitions do not provide needed guidance for eligibility determination. To ensure greater consistency in the identification of students with disabilities among LEAs, eligibility criteria were included. Eligibility for special education requires a two-pronged identification process including determining whether a child has one of the disabilities included in IDEA and determining whether

Issue	Source	Comments	VDOE Response
	1 PT 3 PTA 3 SLP 3 Sped Tch 5 Stu (851)		the child requires special education and related services. This has not changed from the previous regulations. The language that the disability must have an adverse impact on the child's educational performance is a federal requirement. Parents remain a part of the eligibility process. No changes were made in this regard.
	4 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 27 Par 1 PO 1 PT 1 SLP 1 Stu 1 Sped Tch (50)	Oppose the requirement that to be eligible, the disability must have an adverse effect on educational performance and make it necessary for the child to have special education to address the needs of the child that result from the child's disability and to ensure access to the general curriculum. Suggest that this is criteria beyond federal law that is unconstitutional.	The eligibility group is in a better position of determining a need for a medical diagnosis, depending on the child's specific needs, rather than the SEA regulating the necessity of such diagnoses. This holds true also for the need to have newer psychological assessments. VDOE agrees with the removal of "who is trained in observations" as this language was removed from the federal regulation. VDOE will recommend this removal to the BOE. No additional clarification is necessary.
	1 Par (1)	Suggests ensuring that definitions are carefully written so that all conditions receive equal consideration and have a common understanding. For example, the definition for dyslexia is detailed as part of the definition of SLD, but other conditions are not clearly defined.	
	1 AO (1)	Suggests that language be included that specifies that children can be found eligible using the applicable federal definitions of disability category in conjunction with appropriate evaluations and assessments.	
	1 AO 1 Att 1 Par (3)	Suggests adding language that would require that the relationship of the child's behavior to the child's academic and functional performance be the standard rather than academic functioning. Suggest that the federal regulations use educational performance which is both functional and academic.	
	1 LEA Gen 2 PO 13 Prin 34 Sped Adm 4 SLP 1 SOP 9 Sped Tch 1 SW (65)	Support the adoption of uniform criteria for disability identification.	

Issue	Source	Comments	VDOE Response
	1 Cit (1)	Supports adding specific criteria for multiple disabilities, emotional disturbance, and deaf/blind and that without criteria, children will not be found eligible under these categories.	
	1 Sped Adm (1)	Supports provision which allows the eligibility group during a re-evaluation to determine that the IEP team does not need to convene if there is not a change to the child's eligibility or educational needs, unless the parent requests that the IEP team meets.	
	1 Par (1)	Opposes changes that limit the involvement of parents in the eligibility process.	
	1 Par 1 Sped Tch 1 Gen Ed (3)	Suggest that the regulations need to identify which disabilities require a medical diagnosis and state that school personnel are not qualified to make a medical diagnosis.	
	2 AO 1 Cit 1 LEA Gen 1 Par 1 PO 2 Sped Tch 1 SLP (9)	Suggest including a requirement for a medical diagnosis to be determined eligible for autism, ADD/ADHD. Some LEAs require this and others do not, but LEA personnel are not qualified to make such diagnoses.	
	1 Par (1)	Suggests language that would ensure access to an interpreter for families who do not speak English and for students to be evaluated for services in the native tongue.	
	1 Par (1)	Suggests that neuro-psychological assessments be required to determine a specific disability and to help with identifying appropriate instruction and/or services.	
	1 Sped Adm (1)	Concerned about the broadening eligibility requirements particular to the identification of specific learning disability to all disability categories may lead to confusion, especially when applied to certain categories such as hearing impairment, vision impairment, and multiple disabilities.	
	1 LEA (1)	Opposed to language related to a member of the eligibility group who is trained in observation who performs one. Suggests the removal of the language, "who is trained in observation" just as it was removed from the proposed federal guidelines.	

Issue	Source	Comments	VDOE Response
Eligibility -- General Procedures (except group composition) 8 VAC 20-81-80 A.- I., T (183 comments)	1 Gen ed (1)	Suggests that medical evaluations be required for autism, ADD, ADHD since school personnel are not qualified to make these diagnoses.	VDOE does not believe the suggested changes to criteria are necessary because Autism, ADD, and ADHD are identified based on observed behaviors and can be noted by trained school professionals.
	1 Sped Adm (1)	Opposes a requirement for observations for all students, particularly suspected speech language impairment or preschool DD (areas we have typically not required an observation from other than the child's teacher) - this will result in more cost and more time to complete evaluations.	The proposed provisions for observations are consistent with current federal and state requirements. Observations in classrooms are important for all eligibility determinations since it must be documented that a child requires special education in addition to having a specific disability. Observations provide the data needed to document the need for specialized instruction.
	1 PRC 1 Par (2)	Support allowing observations of children when a disability is suspected.	The proposed provision related to "performance" is consistent with federal requirements.
	1 Sped Adm (1)	Suggests clarifying the term "performance" as it pertains to documentation of determination of eligibility. Does it apply only to performance on an SOL test, overall classroom performance, etc?	RTI is an effective approach to measuring the effectiveness of targeted interventions prior to considering the possibility of a disability. If interventions are not successful, the data gathered during the RTI process provides evidence needed for eligibility determinations.
	1 Sped Adm (1)	Opposes the use of RTI for disabilities other than LD.	The proposed regulations require the LEA to provide the parent with prior notice if the LEA decides that a child is not eligible for special education and related services.
	1 Sped Adm (1)	Suggests clarifying the requirement for prior notice if a child is not eligible at initial eligibility.	The eligibility criteria proposed are generally accepted criteria and would provide consistency across Virginia.
	3 Adv 6 AO 1 Att 14 Cit 1 MD 29 Par 1 PT 1 SLP 2 Stu (58)	Oppose more stringent eligibility criteria which are highly restrictive and narrows the requirements of IDEA and the federal regulations..	Termination of eligibility is based on an evaluation process using the same criteria that was required to find a child eligible for special education and related services. This includes having a disability that creates an adverse educational impact and which requires special education and related services to address the child's needs and to ensure access to the general education curriculum.
	3 Adv 7 AO 2 Att 13 Cit 1 MD 25 Par 1 SLP 2 Stu 1 PT (55)	Oppose deletion of language regarding the requirement for written parental consent for any change in categorical identification.	<p>VDOE believes that the eligibility group should decide on whether a medical diagnosis is needed as part of the evaluation process. Such decisions are based on the child's individual needs and not as a regulatory requirement for all children being evaluated.</p> <p>VDOE will recommend language that retains parent consent requirements.</p> <p>A school cannot change an eligibility. An eligibility group, which includes the parent, makes this decision.</p> <p>VDOE will recommend to the BOE to retain the current provision of the timeline being triggered upon the receipt of referral by the</p>

Issue	Source	Comments	VDOE Response
	1 Par (1)	Opposes termination of eligibility without legal or medical basis.	<p>special education administrator or designee.</p> <p>VDOE will recommend to the BOE revised language to eliminate use of the phrase “for the child to have special education.”</p>
	1 Par (1)	Suggests clarification is needed such as “Can the school change an eligibility?”	
	1 Par (1)	Suggests the need for clarification regarding the eligibility point of a child to transfer into Child Find from early intervention.	
	1 Gen Ed (1)	Suggests the Board reexamine eligibility criteria and identification.	
	1 Adv 1 LEA Gen (2)	Oppose delaying the trigger for the eligibility timeline until parental consent is obtained rather than starting the clock when the initial referral is made.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (54)	Suggest that the section regarding initial eligibility be re-titled, “Children found not eligible for special education at <u>initial</u> eligibility “to add clarity that these only apply at initial eligibility.	
	1 Att (1)	Suggests the phrase, “for the child to have special education” is awkward and should read, “for the child to require special education services.”	
	1 Sped Adm 1 Par (2)	Support the adoption of criteria for disabilities.	
	1 Sped Adm (1)	Suggests clarifying required members of eligibility meetings to include only those pertinent to the evaluations and suspected disabilities. For example, the use of “and” in the list of evaluations to be conducted is confusing. Since an SLP, remedial reading teacher or school psychologist are specified, does this mean that a SLD teacher may not be used to administer diagnostic assessments? Suggests that costs to LEA will increase if required to have an SLP and school psychologist at every eligibility meeting.	
Eligibility -- Group Composition 8 VAC 20-81-80 C. 2. (1 comment)			The list of school psychologist, speech-language pathologist, or remedial reading teacher is preceded by “such as” to denote that these professionals serve as examples of someone qualified to conduct individual diagnostic examinations of children. As such, this is not meant to be an exclusive list. The provisions do not require that an SLP or school psychologist be at every eligibility meeting, unless the professional is representing the discipline providing the assessment.
Age 2 Eligibility	2 SLP 1 Sped Adm (3)	Suggest that FAPE in Virginia should begin at age 3 as in the federal regulations. Opposed to the provision of special education services under Part B.	The <i>Code of Virginia</i> has required special education for students with disabilities from age 2 since 1972. It would require a change in the <i>Code of Virginia</i> to revise this requirement.

Issue	Source	Comments	VDOE Response
8 VAC 20-81-10; 8 VAC 20-81-100 A. 1. (6 comments)			
	1 Cit (1)	Opposes Governor Kaine's program to increase preschool programs for children younger than 5. These should be family or community programs, rather than educators being surrogate parents.	
	1 LEA Gen 1 Prin (2)	Support Early Intervention as the placement for 2 year olds with special needs, not public schools.	
Response to Intervention 8 VAC 20-81-80 J. (94 comments)	1 Adv 1AO 1 Cit 1 LAC 7 Par 1 SLP (12)	Suggest clarifying RTI – is it a tool for determining whether a student is SLD? If so, provide guidance regarding what tools should be used? How will response be determined? What scientifically based tools are required? Who is qualified to assess a student's response? What training is necessary for an individual to be qualified to assess a student's response to intervention?	<p>VDOE has developed guidance and continues to provide training opportunities throughout the state on RTI. Technical assistance will continue to be available either through VDOE staff and/or through the T/TACs.</p> <p>Due to the extensive technical assistance activities planned and provided, VDOE does not believe additional language is necessary for these regulations. LEAs will need the flexibility to develop local procedures and strategies for ensuring appropriate research-based strategies are implemented prior to identifying children for special education services.</p> <p>In response to the comments, VDOE will recommend additional provisions under "Child Find" that expand that basic framework of the school divisions' responsibilities and the use of RTI.</p>
	1AO 1 Att 1 Par (3)	Suggests adding language, "provided that any research-based intervention or alternative research-based intervention does not delay or deny appropriate evaluations of a child suspected of having a disability." Also suggests that RTI can be misused to delay evaluations and that the VA regulations need to be clear that the use of RTI cannot "delay [an] appropriate evaluation of a child suspected of having a disability." 34 CFR 300.226(c)	
	1 Par (1)	Suggests that LEAs provide links or direct information on research-based response to intervention.	
	1 Par (1)	Opposes the elimination of child study committees due to the lack of clarity about RTI and special education.	
	1 PO (1)	Supports the use of RTI for determining whether a child has an SLD.	
	1 Cit (1)	Supports clarification regarding Response to Intervention as it relates to the determination of specific learning disabilities.	

Issue	Source	Comments	VDOE Response
	1 LEA Gen (1)	Oppose elimination of child find as the changes outlined are very vague and do not include some very important parameters such as who will be responsible for the implementation of interventions and what constitutes an intervention. How will it be ensured that interventions are research-based and target the specific learning need of the child? How does the process work? At what point are special education services warranted?	
	3 Adv 5 AO 3 Att 9 Cit 1 EO 1 LAC 1 MD 46 Par 1 Psy 1 PT 2 Stu 1 Sped Tch (74)	Support strengthening the language regarding RTI. The proposed regulations only state that RTI cannot "needlessly delay" evaluations, but the federal requirements are stronger.	
Consent -- Partial or complete Termination of Services 8 VAC 20-81-90 B. 3. 8 VAC 20-81-170 E.2.f. (1440 comments)	3 Adm 2 Att 4 Cit 2 Gen ed 10 LEA Gen 1 OT 3 Par 1 PO 25 Prin 10 SLP 1 SOP 60 SpedAdm 27 Sped Tch 2 Sup (151)	Support the proposed removal of parental consent requirement for full or partial termination of services. Rationales: <ul style="list-style-type: none"> • Cannot support the use of resources and instructional time for students who have demonstrated their ability, through reevaluation, to access the general curriculum to meet state standards, and therefore, are not eligible for special education and related services; • To maintain termination causes significant personnel and financial impact on schools; and • LEAs should not be required to provide costly special education and related services to students who do not meet eligibility criteria, yet whose parents refuse to consent to termination. 	In its proposed regulations, the Board of Education proposed to continue to include most Virginia-specific consent requirements, but proposed the elimination of the consent requirement for partial or complete termination of services: <ul style="list-style-type: none"> • to ensure that special education and/or related services and the associated rights are provided to only those students whose evaluation data and progress reports continue to indicate eligibility, and • to ensure that IDEA funding is used appropriately to provide services to only those students who are determined eligible for special education and related services in accordance with IDEA. LEAs submitted examples in which staff are assigned to students who are no longer eligible, but whose parents will not sign consent for removal from special education.
	20 Adv 32 AO 7 Att 4 Brd 684 Cit 1 CSB 7 EO 2 Gen ed 1 Guid 2 Int	Oppose the proposed elimination of parental consent for full or partial termination of services.	

Issue	Source	Comments	VDOE Response
	3 ITC 4 LAC 4 LEA Gen 3 MD 1 OT 418 Par 4 PO 2 PRC 1 Prin 1 Priv 1 Psy 3 PT 4 PTA 4 SLP 2 Sped Adm 13 Sped Tch 1 SSEAC 7 Stu 1 SW 1 Voc (1238)		
	1 Att 9 Cit 1 EO 1 LAC 1 MD 3 Par 24 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu (45)	Oppose deletion of language indicating a requirement for parental consent for any determination that a child is no longer eligible for special education services.	
	1 Par (1)	Suggests that VDOE and LEAs should initiate due process if they feel that services must be terminated against the parents' will. The decision can then be made through an impartial and objective hearing process.	
	1 Att (1)	Supports the parent's opportunity to "veto" the IEP.	
	1 Sped Adm (1)	Unsure of proposed regulations that would eliminate parent consent for full or partial termination of services. Current regulations requiring parental consent puts all control for termination in the hands of one or two people and this can lead to a complete disregard of committee deliberations. However, parents have the primary responsibility for the overall education of their children and if there is	

Issue	Source	Comments	VDOE Response
		disagreement about the termination of services, the pattern of success in the classroom over the preceding 2-3 years should be the determining factor.	
	1 Par (1)	Suggests that current language is confusing which indicates that parental consent is not required while the LEA must comply with the prior written notice requirements. Recommends elaborating on due process if this is the case.	
	1 Par (1)	Clarify whether or not IEP goals may be terminated without parental consent.	
	1 Psy (1)	Suggests that if the IEP team reaches consensus, special education and related services may be terminated without consent. However, parents who are not in agreement should have the option to file an appeal within 30 days of the decision. During the appeal, the current IEP would remain in effect. Notice requirements would attach.	
Termination of Services (other than consent) 8 VAC 20-81-90 A. - C. (59 comments)	1 Par (1)	Recommends adding language that would require the IEP team to determine when a child is no longer a child with a disability who needs special education and related services, would allow a related service to be terminated during an IEP meeting without determining that the child is no longer a child with a disability who is eligible for special education and related services, would require the IEP team to include local educational agency personnel representing the specific related services discipline being terminated, and would require the local educational agency to comply with prior written notice requirements when services are terminated.	The VDOE recognizes the need to ensure clarity in these provisions. Therefore, it will recommend modifications to the language. The suggested language was included in the draft regulations.
	3 Adv 6 AO 2 ATT 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (54)	Suggest adding federal language to include, "A public agency must provide a child whose eligibility terminates because of graduation from secondary school with a regular diploma or exceeding the age of eligibility for FAPE, with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals."	
	1 Att (1)	Suggests clarifying the language "shall follow the procedures in 8 VAC 20-81-80 to terminate the child's eligibility..."	
	1 AO 1 Att 1 Par (3)	Recommend adding language "or before completely terminating a child's related or supplementary services" to ensure that appropriate data is used before terminating special education as well as additional support services.	
FAPE – General	1 Gen Ed	Suggests that requirements for transitions from level to level, in addition to	VDOE believes the IEP process is designed to address

Issue	Source	Comments	VDOE Response
<p>8 VAC 20-81-100 A. 2., B. - D., K., M</p> <p>(139 comments)</p>	(1)	transition to postsecondary settings, be included in the regulations. This would include transition from elementary to middle school and middle to high school.	adequately the transition needs from elementary to middle and middle to high school without imposing additional regulatory requirements.
	1 Sped Tch (1)	Suggests that students with disabilities should not be urged to opt for a regular diploma when their reading levels are well below their grade level. Suggests that students with disabilities are marketable with a modified standard diploma.	IDEA & NCLB measure school performance partly by the percentage of students graduating with a standard or advanced studies diploma. IEP teams, however, determine the diploma to be targeted for individual students.
	3 Adv 11 AO 3 Att 14 Cit 1 EO 1 LAC 1 MD 38 Par 1 PO 1 PT 1 SLP 1 Sped Tch 2 Stu (78)	Oppose deletion of language pertaining to a full educational opportunity goal. This requires LEAs to remain engaged, responsible and accountable for setting goals that demonstrate their partnership with students and parents for providing full educational opportunities for students with disabilities.	<p>VDOE believes that the proposed regulations in their entirety are consistent with, or exceed the requirements of IDEA and the federal implementing regulations.</p> <p>The provision for children with disabilities, regardless of citizenship or immigrations status, being provided FAPE is ensured in 8 VAC 20-81-30 B.10 consistent with OSEP guidance and case law.</p> <p>VDOE is ultimately responsible for FAPE for all children with disabilities in accordance with the federal and state requirements. Through monitoring and technical assistance activities, VDOE works with all LEAs to ensure compliance with the regulations.</p>
	3 Adv 6 AO 2 Att 11 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (51)	Oppose the language, "who meet the age of eligibility requirements in 8 VAC 20-81-10" since this is intended to prevent students over the age of five in the DD category from receiving services.	VDOE has held that the length of the school day for preschoolers is determined by the IEP team. VDOE agrees with the commenter and will recommend added language to the BOE to clarify this requirement.
	1 Par (1)	Questions how VDOE will ensure FAPE if the proposed regulations pass, especially if the school has its own agenda.	
	1 Att (1)	Seeks clarification regarding the requirement for non-citizens of the US to be evaluated and receive FAPE.	
	1 Par (1)	Suggests that an appropriate education can only be determined with the parents and teachers working together.	
	1 Att (1)	Clarify what is meant by "separate facility." Does this mean separate public and private schools?	

Issue	Source	Comments	VDOE Response
	1 Par (1)	Suggests that a provision be added to specify that the need for transportation not be used to arbitrarily shorten the length of the school day.	
	1 Cit (1)	Suggests that schools should be required to start classes for students with disabilities at the same time as other students. Starting later has cost children as much as 5 hours per week of instructional time.	
	1 Par (1)	Concerned that the proposed regulations do not provide the same level of requirements as the federal special education regulations.	
	1 Sped Adm (1)	Suggests that a provision be included to require a schedule for students in the early childhood program that is comparable in length to school age children.	
Transportation (other than private school) 8 VAC 20-81-100 G.3. (3 comments)	1 AO 1 Att 1 Par (3)	Support G.3. as written requiring transportation to and from an education program comparable in length to the commute provided to children without disabilities unless the child's IEP determines that a longer or shorter commute is necessary to ensure that the child receives FAPE.	This provision is consistent with federal requirements.
Timeline – IEP Development 8 VAC 20-81-110 B.2.b. & c. (234 comments)	1 Sup (1)	Opposes the change from “as soon as possible” to “within 30 days of parental consent” for IEP implementation because IEP teams need to have the authority to decide.	<p>The proposed regulations require that an LEA implement the services on an IEP as soon as possible or within 30 days unless they provide in writing a reason for not providing them. In the past, the regulations required only as soon as possible. The standard of 30 days is a reasonable timeline and is stricter than current provisions. Including this language clarifies the expectation. However, VDOE will recommend that the BOE delete this proposed change.</p> <p>The expectation is that the parent receive a copy of the IEP at the meeting or as soon as possible thereafter. VDOE will recommend modifying the provision to say that the LEA is to provide the parent with a copy of the IEP at the meeting or within a reasonable time after the meeting, not to exceed 10 days.</p>
	6 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 33 Par 1 PO 1 PT 1 SLP 1 Sped Adm 1 Sped Tch 1 Stu (59)	Oppose proposed provision that allows LEAs to take up to 30 calendar days to implement an IEP and suggests using current language that requires the LEA to implement an IEP as soon as possible following the IEP meeting.	
	4 Adv 6 AO 2 Att 13 Cit 1 EO	Oppose lengthening the time, without parental consent, that a school has to postpone addressing a child's specific accommodations.	

Issue	Source	Comments	VDOE Response
	1 MD 50 Par 1 PT 1 SLP 3 Stu (82)		
	1 Par (1)	Opposes changes to the timeline for IEP implementation from “days” to “business days” and only counting once parental consent is obtained, thus delaying services to students.	
	11 AO 4 Adv 3 Att 14 Cit 1 EO 1 LAC 1 MD 39 Par 1 PO 1 PT 1 SLP 1 Sped Adm 1 Sped Tch 2 Stu (81)	Oppose the proposed provision that allows 10 calendar days from the date of the IEP meeting to provide a copy of the IEP to the parent. A parent must see the IEP to provide informed consent and this should be provided immediately at the end of the meeting or no more than 2 days after the meeting.	
	1 Sped Adm (1)	Opposes the proposed provision that requires that a copy of the IEP be given to parents no later than 10 calendar days from the date of the IEP meeting.	
	1 Cit (1)	Supports the proposed change that provides a timeline of when to provide a copy of the IEP to the parent, but requests the timeframe be reduced to 5 business days.	
	2 Par (2)	Suggest changing the implementation timeline to “not to exceed 10 days” rather than 30 – unless the LEA documents reasons for the delay.	
	1 Cit (1)	Opposes the proposed timeline for IEP implementation and suggests it be revised to require IEPs to be implemented within 10 calendar days of consent and that makeup services be provided for delays beyond 10 calendar days.	
	1 LEA 3 Sped Adm (4)	Support the provision that does not require an IEP to be developed within 30 days of an eligibility at which services are continued rather than initiated and when there is no need for a change to the IEP as this would eliminate wasted time, effort, and paper.	

Issue	Source	Comments	VDOE Response
	1 AO (1)	Supports the requirement that an IEP be developed within 30 calendar days of eligibility.	
IEP -- Accountability for achieving IEP goals 8 VAC 20-81-110 B.7. (714 comments)	9 Adv 16 AO 5 Att 416 Cit 1 EO 1 Indiv 2 Int 1 LAC 1 LEA Gen 1 MD 1 OT 147 Par 1 Psy 1 PT 2 PTA 1 SLP 2 Sped Tch 6 Stu (614)	Oppose the proposed provision that does not hold LEAs accountable for projected growth in the IEP. Suggest that the regulations require LEAs to be accountable for students making progress on IEP goals and if a child repeatedly fails to meet IEP goals or benchmarks.	In the discussion section of the federal regulations, USDOE noted in a response to a similar comment that “accountability for a child achieving his or her goals (is) unnecessary because other Federal laws, such as title I of the ESEA, already provide sufficient motivation for agency effort to assist children with disabilities in making academic progress.” VDOE concurs with this position. However, VDOE will recommend to delete this provision and address the issue through technical assistance to school administrators and consumers as the issue arises.
	1 Adv 6 AO 1 Att 8 Cit 1 EO 1 LAC 1 MD 24 Par 1 PO 1 PT 1 SLP (46)	Oppose deletion of language that requires an LEA to make a good faith effort to assist the child to achieve goals, including benchmarks or objectives, listed in the IEP.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (54)	Suggest that parents be required to receive a draft copy of the proposed IEP document at an IEP meeting when all LEA personnel have a copy.	

Issue	Source	Comments	VDOE Response
IEP -- Team Composition (except excusal of members) 8 VAC 20-81-110 C. (112 comments)	1 Sped Adm (1)	Supports the proposed regulation that the LEA determines who fills the role of LEA IEP team members.	The proposed provisions regarding the LEA's authority to determine who fills the roles of LEA IEP team members is consistent with USDOE guidance. VDOE has not removed parents from the IEP team composition. The phrase "at parent's request" is consistent with the federal requirement. VDOE will retain "whenever is appropriate" which was included in the proposed regulations.
	3 Adv 6 AO 14 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu 2 Att (54)	Oppose proposed provision that allows the LEA to decide which school personnel will participate in the meeting. Suggest that federal guidance only applies to personnel filling the roles, not identifying the roles needed at the meeting. Suggest that this would limit what the parents may discuss by limiting or preventing related services personnel from attending the meeting.	
	2 Par (2)	Oppose removal of parents from the IEP team composition.	
	1 Par (1)	Opposes the use of "at the parent's request" to determine when an LEA invites the Part C service coordinator or other representative of the Part C system. Suggests that the LEA "must" invite whenever a child is transitioning from Part C to Part B.	
	1 Par (1)	Suggests including language indicating that there are no restrictions on the individuals/friends that a parent would like to come to an IEP meeting.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Supports proposed change from "if" to "whenever is appropriate" for child participation in the IEP meeting. This provides more impetus to include the student.	
IEP – Excusal of Team Members 8 VAC 20-81-110 D. (53 comments)	6 AO 3 Adv 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Oppose the proposed language used to describe the excused members requirements for submission of information and suggest replacing it at 20-81-110 D.2.b. with the following: "the excused member submits in writing to all IEP team members sufficient information to aid in the development of the IEP prior to the day of the meeting. The information shall be forwarded to the parent(s) at the same time as the other IEP team members." By providing this at the same time to parents will facilitate parent/team participation and by having it in advance, they can adequately consider it and possibly ask questions from the excused member in advance of the meeting.	The proposed provisions are consistent with the federal regulations.

Issue	Source	Comments	VDOE Response
IEP – Parent Participation in Meeting (except recording of meetings) – includes notice of meetings 8 VAC 20-81-110 D. – E. (51 comments)	1 Par (1)	Supports parents as a member of the IEP team – better to work with parents than make an enemy.	The proposed provisions are consistent with the federal regulations and require that parents are invited to participate in IEP meetings with certain rights associated with participation including the right to bring someone to the meeting who meets the regulatory requirements.
	4 Adv 1 AO 1 Brd 3 Cit 1 EO 31 Par 1 Prin 1 Psy 1 Sped Tch 1 Stu (45)	Oppose proposed changes that would limit or decrease parent participation in the IEP process.	
	1 Con 1 Par (2)	Oppose the proposed change indicating that the IEP meeting notice “may” be in writing rather than “should” be in writing. However, suggest a change requiring that the IEP meeting notice “must” be in writing.	
	3 Par (3)	Suggest that the IEP process does not permit parents to have access to school district information on such issues of testing results, instructional methodologies, and coordination of services or preparatory activities that school personnel engage in to develop a proposal or response to a parent proposal and that eventually become part of a due process. Not only does the school have superior information and expertise, but their representatives dominate the IEP team. Parents are decisively outnumbered by their school counterparts. School systems maintain exclusive control of IEP documents during their development.	
IEP – Recording of Meetings – video or audio 8 VAC 20-81-110 E.6. (111 comments)	1 AO 1 Att 2 Par (4)	Oppose limiting audio or video recording at eligibility, IEP, and MDR meetings. Support allowing recording of these meetings.	VDOE's proposed revision is the same as the current provision that permits audio recording at IEP meetings. Video recording is in accordance with the LEA's policy. According to current regulations of the proposed revisions, the use of audio recording applies to IEP meetings where the IEP is being developed, reviewed or revised. The US DOE has also spoken of audio recordings in this same context. Local policies have determined the use of audio recording for other types of IEP team meetings, such as eligibility or MDR. However, VDOE agrees with the comments that its use should be expanded to include eligibility and MDR. Accordingly, VDOE will recommend the expanded language to the BOE. Additionally, VDOE will recommend to move the provision for audio taping to 8 VAC 20-81-170, Procedural Safeguards, since the use of audio taping will extend beyond IEP meetings.
	6 AO 3 Adv 1 Att 14 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Oppose the limitation of recording to only IEP meetings and suggests that eligibility meetings be added to this provision. Eligibility meetings have a significant impact on a child's future and provision of FAPE. It is imperative that parents be allowed to record in order to review the specific details of the meetings. This meeting can be overwhelming and unfamiliar information and terminology is likely to be used. Recording eligibility meetings will help reduce the confusion.	
	3 Adv 7 AO 2 Att	Supports the proposed provisions that specify the use of policies that regulate recording meetings. This will facilitate consistent or uniform application of parent rights and provides a clear understanding of what those rights are.	

Issue	Source	Comments	VDOE Response
	13 Cit 1 MD 24 Par 1 PT 2 Stu (53)		
	1 Att (1)	Suggests changing “for the purposes of developing, reviewing, revising the child’s IEP” to read “other than IEP meeting”. As stated, it appears inconsistent with item (b)(1) and suggests that a staff planning meeting to draft an IEP could be recorded. I know this result was not intended.	
IEP – Development, Review, and Revision 8 VAC 20-81-110 F. (171 comments)	1 Par (1)	Opposes changes to IEP guidelines.	The proposed provisions are consistent with the federal regulations.
	1 Cit (1)	Opposes the elimination of summer school for students with disabilities.	Summer school has always been an LEA initiative under the general education curriculum. It is separate and distinct from ESY services.
	6 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 29 Par 1 SLP 1 PT 1 Sped Tch 1 Stu (53)	Oppose the proposed language that states that an IEP is not required to include additional information not explicitly required by the proposed regulations, because IEPs are individual and may require additional information for some children.	The proposed language regarding an IEP, not including additional information, is a federal requirement. It is inappropriate for VDOE to recommend regulating methodologies, such as L OVASS or ABA.
	3 Adv 6 AO 2 Att 12 Cit 1 MD 23 Par 1 PT 1 SLP 2 Stu (51)	Suggest amending language related to IEP content to say, “nothing in this section shall be construed to prohibit” (rather than “require”). If additional information in the IEP helps make the IEP easier to follow, that would help ensure FAPE for the child. That information should not be prohibited from being included.	
	1 Stu (1)	Suggests that the requirement for an IEP not be removed.	
	2 AO 1 LEA Gen	Suggests that all members of the IEP team be informed prior to any changes to the child’s IEP.	

Issue	Source	Comments	VDOE Response
	1 Par 1 PO 1 SLP 2 Sped Tch (8)		
	1 Par (1)	Suggests the need for expanded professional services and additional aids for students with hearing impairments.	
	1 Cit (1)	Suggests that all schools should be required to implement Lovaas or ABA.	
	1 Par (1)	Suggests including language that distinguishes between when speech/language services are specially designed instruction because a child has a speech/language impairment, and when speech/language services are a related service.	
	1 Par (1)	Supports including language indicating that the parent and/or child have the right to select a mode of communication for the child, and not the LEA (i.e., ASL v. ESL).	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 SLP 2 Stu (52)	Support the proposed deletion of "if appropriate" at 20-81-11- F.2.a. in addressing the need to consider the use of positive behavior intervention, strategies, and supports when behavior impedes the child's learning or the learning of others. This should be standard practice.	
IEP -- Content (General) 8 VAC 20-81-110 G. (658 comments)	1 Sped Adm (1)	Supports the creation of regulations and IEP forms that promote collaboration between the LEA and families. There are parents willing to take on aspects of their child's education that deal with life skills, however, these items are not noted in the IEP for fear of LEAs being held responsible.	<p>Only those IEP requirements included in the federal regulations or the <i>Code of Virginia</i> are included in the proposed regulations. These regulations do not prohibit the use of procedures developed locally to enhance the collaboration that is intended to be used in the special education process. Decisions regarding services included in an IEP are made by the IEP team. Once developed, the LEA must implement the IEP as written after receiving parent consent.</p> <p>The proposed regulations provide additional clarification regarding placement and location, complying with all federal mandates.</p> <p>An amended IEP does not substitute for a full revision. This would not substitute for an annual review and revision which would review and revise each section of the IEP, thus resulting</p>
	2 Sped Adm 1 Sped Tch (3)	Support distinguishing between placement and location; the IEP team determines placement (i.e., the provision of special education and related services on the continuum of services) whereas the local education agency determines the specific place/site/location for the delivery of these services.	
	1 Par (1)	Suggests that clarification is needed related to the indication that an amended IEP is not a substitute for an annual IEP.	

Issue	Source	Comments	VDOE Response
	1 Brd 14 Par 1 Indiv 1 PTA 2 Stu (19)	Oppose elimination of parental participation in the IEP process to ensure equitable involvement.	in a new document. VDOE does not believe it is necessary to further clarify this in the regulations. Parental participation was not decreased in the proposed regulations.
	5 Adv 14 AO 3 Att 1 Brd 301 Cit 3 EO 2 Int 1 MD 1 OT 145 Par 1 PO 2 PT 2 PTA 1 SLP 2 Sped Tch 6 Stu (490)	Oppose the proposed provision that allows an LEA to refuse a parent's request for an IEP meeting if they consider such a request unreasonable.	Based on guidance from USDOE, it has been the position of VDOE that an LEA can deny a parent's request for an IEP meeting if the LEA considers it unreasonable. It was included in these proposed regulations to clarify this position for all parties. However, VDOE will remove the provision in this revised draft and provide school administrators and consumers the necessary information when it arises. It is consistent with federal regulations that an LEA would need to provide a copy of an IEP with amendments only when a parent requests it. There are times when minimal changes are made and a complete copy of the IEP is not necessary unless a parent wants the copy. A requirement to provide a copy at all times increases unnecessarily the time and resources necessary to copy.
	3 Adv 10 AO 3 Att 16 Cit 1 EO 1 LAC 1 MD 44 Par 1 PO 1 PT 1 SLP 1 Sped Tch 3 Stu (86)	Oppose the provision that allows an LEA to provide a copy of an amended IEP to the parent only on request. Suggest that the LEA be required to provide the parent with a copy automatically to ensure complete understanding on the part of the parent regarding what was decided and agreed upon at the meeting.	The proposed regulations require that an LEA implement the services on an IEP as soon as possible or within 30 days unless they provide in writing a reason for not providing them. In the past, the regulations required only as soon as possible. The standard of 30 days is a reasonable timeline and is stricter than current provisions. Including this language clarifies the expectation. However, VDOE will recommend to the BOE to retain the current language. Parental rights have not been removed except in the case of termination of services in which a parent's consent is not required if the data do not support continued eligibility. In this situation, if a child's services are terminated without parental consent, the right to an independent educational evaluation, mediation, or due process continues to be provided to parents. However, VDOE will recommend to the BOE to retain the current parent consent provision.
	1 Par (1)	Suggests clarifying that IEPs must be in effect at the beginning of the school year – not just “in process.”	The need to provide therapy for missed sessions is the result of long-standing guidance from USDOE. Sessions are not required for make up only in those cases during which the child is absent from school. Another school-wide activity is insufficient cause for not providing the therapy on the IEP.
	1 Par (1)	Suggests clarifying that instruction in a self-contained class should not affect diploma options if the student can pass the required test with the same modifications provided in the general education class.	VDOE provided guidance to school divisions in June 2008 regarding service dogs in Virginia's public schools, in compliance with the 2008 changes to the Code of Virginia in this regard. VDOE does not believe that additional regulations to these proposed special education provisions are necessary.

Issue	Source	Comments	VDOE Response
	1 Par (1)	Suggests that the IEP delineate the methodologies to be used to achieve the IEP goals and specify the amount of time that is allotted for each IEP goal addressed.	The phrase "based on peer" reviewed..." was inadvertently omitted from the proposed regulation. VDOE will recommend that the phrase be inserted.
	1 Par (1)	Suggests language be included in the proposed regulations regarding service animals because recent VA law has clarified the right of disabled persons to use service animals in school. Suggests that if it is not a policy in the regulations, then IEP teams may be misinformed regarding the right of a disabled student to use a service dog.	
	1 Par (1)	Suggests that assessment subtest scores need to be included in the IEP, particularly in the areas of reading, writing, and math as well as IQ subtests. It is imperative to know if a child has a difficulty comprehending what they read because they cannot decode the words or there are other problems involved.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Suggest that the provision, G.4., regarding the statement of services to be included in the IEP include the following federal language, "based on peer-reviewed research to the extent practicable." This is intended to provide guidance on best practice and the child's education will be improved by using methods tested and proven to work. The federal requirement comes from 300.320(a)(4).	
IEP Content – Present Level of Performance 8 VAC 20-81-110 G.1. (57 comments)	3 Adv 6 AO 2 Att 13 Cit 1 MD 1 PT 24 Par 1 SLP 2 Stu (53)	Suggest using the term "shall" rather than "should" in describing what will be included in the present level of performance.	The requirements for the present level of performance are based on the federal regulations. The term, "shall," is used in the proposed regulations to describe what must be included in the present level of performance. The present level of performance provides the data-driven foundation on which the rest of the IEP is based. The proposed regulations require that the present level of performance relate to other components of the IEP.
	1 Par (1)	Suggests the use of data-driven IEPs as the implementation of the plan is closely monitored and changes can be made based on the data, which is where the most success is seen.	
	1 AO 1 Att 1 Par (3)	Suggest that it be required for the present levels of performance directly related to other components of the IEP.	
IEP Content - Short-Term	7 Adv	Oppose proposed elimination of short-term objectives for non-VAAP students.	The inclusion of short term objectives for all students is not

Issue	Source	Comments	VDOE Response
Objectives 8 VAC 20-81-110 G. 3. (1080 comments)	17 AO 6 Att 1 Brd 187 Cit 1 CSB 1 EO 1 ITC 1 LAC 1 MD 33 Par 1 PO 1 Psy 1 PT 1 Sped Adm 3 Stu (263)	Support the requirement for short-term objectives and benchmarks for all students.	<p>necessary and as Congress identified, would impose unwarranted paperwork and burdens on LEAs. With local accountability for students with disabilities to participate in the general education curriculum and perform successfully on standardized tests alongside peers without disabilities, the Board proposed retaining short term objectives for only those students participating in an alternate assessment. However, language is included to provide IEP teams with the flexibility to include short term objectives, if necessary for FAPE.</p> <p>Also, as participants on the IEP team, parents have the right to request consideration of the inclusion of short-term objectives into their child's IEP. A refusal would require prior written notice from the school division, which would include a justification for refusal.</p>
	10 Adv 12 AO 1 Att 573 Cit 2 Int 1 LAC 1 LEA Gen 1 MD 126 Par 1 PO 2 PT 3 PTA 3 SLP 2 Sped Tch 1 SSEAC 2 Stu (741)	Suggest clarifying that IEP teams must consider including short-term objectives for all students. Unless consideration is included on the IEP meeting agency checklist, these tools will go unused.	
	3 LEA Gen 1 PO 12 Prin 1 SLP 36 Sped Adm 20 Sped Tch 1 SSEAC 1 SW (75)	Support elimination of short-term objectives/ benchmarks, consistent with IDEA 2004, to be required only for students eligible for the alternate assessment.	
	1 Sped Adm (1)	Supports the proposed elimination of required short-term objectives as indicated in the draft regulations, but also agrees that LEAs should be allowed to have the right to choose. They may be needed for speech, OT, HI, VI, and PT.	

Issue	Source	Comments	VDOE Response
IEP - Progress Reports 8 VAC 20-81-110 G. 8. (1054 comments)	18 Adv 24 AO 6 Att 2 Brd 587 Cit 1 CSB 2 Int 1 LAC 1 LEA Gen 1 MD 1 OT 221 Par 1 PO 1 Psy 5 PT 1 PTA 3 SLP 2 Sped Adm 2 Sped Tch 10 Stu (890)	Oppose proposed elimination of requirement to require progress reports at least as often for students with disabilities as for students without disabilities. Support requiring IEP progress reports at the same intervals as nondisabled peers.	The proposed provisions are consistent with federal regulations requiring that each student's IEP include a description of how a child's progress toward meeting annual goals will be measured and when periodic progress reports will be provided. This reporting may be more frequently, less frequently, or with the same frequency as students without disabilities and is based on the unique needs of each student, and determined by the IEP. However, VDOE will recommend to the BOE to retain the current language in order to clarify that IEP progress reports be provided at the same intervals as provided to non-disabled peers.
	1 Adv 5 AO 1 Brd 5 Cit 1 LAC 3 LEA Gen 76 Par 3 PO 12 Prin 1 SLP 30 Sped Adm 22 Sped Tch 2 Stu 1 SW (163)	Support the proposed regulation regarding the provision of progress reports to parents.	
	1 Cit (1)	Opposes the proposed elimination of the phrase, "the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year" because removing this may cause a teacher to feel less pressure for a child to master his/her IEP goals.	
IEP Content – Secondary Transition (except transition age) 8 VAC 20-81-110 G. 10 & H.	6 Adv 2 Att 9 Cit 1 EO 1 LAC	Oppose the proposed deletion of language that indicates that the IEP "shall include related services, community experiences, the development of employment and other post-school adult living objectives, and if appropriate, the acquisition of daily living skills and functional vocational evaluation."	The proposed provisions are consistent with federal regulations and VDOE believes that it is inappropriate to regulate such specificity for programs of student to include transitional programs on college campuses. This is one option for an IEP team to consider depending on the student's educational needs

Issue	Source	Comments	VDOE Response
(270 comments)	1 MD 29 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu (54)		and secondary transition goals. VDOE agrees that the content of the IEP include a provision regarding the parent and student having been informed regarding the transfer of rights to the student. Additionally, 8 VAC 20-81-180 includes a provision for both parent and student being notified of this right.
	3 Adv 6 AO 1 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (52)	Suggest adding language describing programs of study outside the regular secondary curriculum to include transitional programs on a college campus, if the student's IEP team includes such services on the IEP (from the IDEA regulations preamble).	VDOE does not believe that the SEA should regulate which school personnel are responsible for ensuring that transition services are provided as a coordinated set of activities. The LEA is responsible for assigning its own personnel for this task.
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Suggest adding a requirement that the parents be involved in the notification process regarding age of majority to say, ". . . shall include a statement that the student and parent(s) have been informed of the rights . . ." The proposed regulations only currently include the student, but the parents may have the need to gather documentation to show that they need to continue to make educational decisions.	VDOE does not believe that it should regulate who in the LEA will be responsible for inviting representatives from other agencies to the IEP team. While VDOE holds the LEA responsible for ensuring that the representatives(s) from other agencies are invited to the IEP team meeting, the LEA is responsible for assigning its own personnel for this task.
	2 SW (2)	Suggest clarifying which school personnel will be responsible for ensuring that transition services are provided as a "coordinated set of activities."	The USDOE is clear that school divisions are not required to conduct evaluations for children to meet the entrance or eligibility requirements in postsecondary settings; however, rather than regulations this item, VDOE will include it in the training of consumers and address the issue as it arises.
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 SLP 1 PT 2 Stu (53)	Support the proposed provisions regarding transition in the IEP regarding participants, additional notice requirements, and secondary transition services. These changes facilitate smoother and more effective secondary transition efforts.	VDOE does not consider it feasible or within its authority to take the lead in coordinating postgraduate programs between LEAs and college for students who can earn a modified IEP diploma.
	3 Adv 6 AO	Suggest indicating in the regulations who will be responsible for inviting representatives from other agencies to the IEP meeting. Suggested language is,	

Issue	Source	Comments	VDOE Response
	2 Att 13 Cit 1 MD 25 Par 1 SLP 2 Stu (53)	"identify any other agency whom the local educational agency will invite to send a representative, and identify any other agency whom the parent(s) will invite to send a representative." This would avoid confusion regarding who will take the responsibility for inviting representatives and better ensure parent participation.	
	1 Sped Tch (1)	Suggests that VDOE take the lead in coordinating postgraduate programs between LEAs and community colleges for students who can earn a modified IEP diploma.	
	2 Sped Adm (2)	Support the provision that a school is not required to conduct evaluations for children to meet the entrance or eligibility requirements of a vocational rehabilitation program, college, or other postsecondary setting.	
Transition Age 8 VAC 20-81-110 G. 10 (1111 comments)	3 Adm 3 LEA Gen 1 PO 1 PRC 24 Prin 1 SLP 37 Sped Adm 22 Sped Tch 1 Sup 1 SW (94)	Oppose required transition at age 14 - Keep transition requirement at 16 years.	<p>Despite the desire to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education maintained the requirement to begin transition services at age 14 based on:</p> <ul style="list-style-type: none"> • public comment during NOIRA from both parents and school personnel indicating the need to begin transition planning prior to the start of high school, and • the need to ensure that students with disabilities have the opportunity to meet certain transition expectations prior to exiting public education. <p>VDOE, however, recognizes the benefit of differentiating these regulatory requirements applicable when the student is age 14 versus those when the student is age 16, and will recommend this change to the BOE.</p> <p>Other transitions are not addressed in the federal regulations and it would not be appropriate to regulate the way that localities transition students from preschool to kindergarten programs or from elementary to middle schools, as examples. The IEP team may, however, address specific needs relative to these transitions.</p>
	12 Adv 20 AO 4 Att 631 Cit 1 EO 1 IHE 3 Int 2 LAC 2 LEA Gen 1 MD 1 OT 216 Par 2 PO 1 Psy 2 PT 2 PTA 3 SLP 1 SOP 6 Sped Adm 10 Sped Tch 5 Stu	Support the requirement that transition be addressed in IEPs beginning at age 14.	

Issue	Source	Comments	VDOE Response
	6 TTAC 3 Voc (935)		
	3 LEA Gen 1 PO 12 Prin 1 SLP 38 Sped Adm 13 Sped Tch 1 SW (69)	Suggest grade level alignment for transition services, convening no later than the completion of the 8 th grade to coordinate with the Modified Standard Diploma regulations.	
	1 SSEAC (1)	Suggests using standard in current regulations which requires a two-tiered system that begins at age 14.	
	1 Sped Adm (1)	Supports the beginning of transition planning including student involvement, assessments, information gathering at age 14 but feel that applying all of the age 16 requirements to 14-15 year old students goes beyond the intent of the federal law. If the 14-15 year group remains then the requirements should stay with the current regulations (course of study, etc.).	
	2 AO 1 LEA Gen 1 Par 1 PO 1 SLP 3 Sped Tch (9)	Suggest including transition requirements for all transitions including infant and toddler to preschool transition, preschool to elementary, elementary to middle, middle to high, to ensure success at the critical transition milestones.	
	1 Cit (1)	Suggests that transition begin before age 14; suggests age 11.	
	1 Sup (1)	Opposes the requirement that transition be addressed in IEPs beginning at age 14. Students with mild disabilities are often planning for post-secondary activities anyway and the additional paperwork is often meaningless. LEAs should have the option to delay transition planning until age 16.	
Transfer Students 8 VAC 20-81-120 (100 comments)	1 Sped Adm (1)	Supports removal of Virginia specific requirements for transfer students.	The proposed provisions are consistent with federal regulations and provide for the continued provision of FAPE. The provision of services comparable ensures that the student is provided with appropriate services during the time between the transfer and the development of an IEP. This gives the LEA time to gather
	1 AO (1)	Suggests clarifying whether the evaluation option applies only to out-of-state transfer students or also to in-state transfers.	

Issue	Source	Comments	VDOE Response
			information, including evaluations if determined necessary, before developing an IEP. The parent always has the rights included in the procedural safeguards statement to contest the LEA's action through a state complaint, mediation, or a due process hearing.
	1 PO (1)	Supports the consolidation of regulations on transfer students into one section in the proposed regulations.	
	1 AO 1 Att 1 Par (3)	Oppose allowing LEAs to determine whether to evaluate a student transferring into the LEA before developing and implementing a new IEP. Suggest that the parent be involved in the decision to evaluate.	The previous 1999 federal regulations provided that if the LEA and parents could not agree on interim services, the LEA was obligated to implement the existing IEP to the extent possible. Although the phrase "to the extent possible" does not appear in Virginia's 2002 special education regulations, the federal language has applied. The 2006 federal regulations clarified this provision even further that during a dispute over an interim IEP or final IEP for a transfer student, the LEA is obligated to provide FAPE in consultation with the parent(s), including services comparable to the existing IEP, until the dispute is resolved. VDOE believes that the federal language does not compromise the parent's consent or participation in the IEP process, or initiating dispute resolution options, but rather, emphasizes the importance of the LEA ensuring that FAPE is provided for the child during the resolution of the dispute.
	3 Adv 11 AO 3 Att 13 Cit 2 EO 1 LAC 1 MD 39 Par 1 PO 1 PT 1 SLP 1 Sped Tch 3 Stu (80)	Oppose proposal to allow LEAs to provide services comparable to those described in the child's IEP from the previous LEA and supports language currently in the regulations that requires the LEA to implement the IEP from the previous LEA until a new IEP is developed and signed by the parent.	The evaluation option applies to both in-state and out-of-state transfer students. VDOE does not believe further clarification is necessary. Parents remain an integral part of the evaluation process.
	1 Att (1)	Supports the provision that no services are required for transfer students in the absence of the receipt of an IEP by the new school division.	Consistent with USDOE guidance, if an IEP is not provided it would not be appropriate to place a student in any setting other than the general education setting. Special education and related services may only be provided upon evidence that the child is eligible and that consent has been provided to deliver the services. Without an IEP, these elements cannot be verified.
	1 AO 1 Att 1 Par (3)	Oppose the provision that would result in a student being placed in the general education setting if the LEA cannot obtain a copy of the IEP from the previous LEA. Suggest that the parent and LEA work together to determine what services are necessary to provide FAPE until the LEA can obtain the necessary information or until evaluations can be completed and a new IEP developed.	Currently, if an LEA has trouble securing records from a previous LEA, including an IEP, VDOE will assist. The proposed regulations clarify that this is an option for LEAs.
	1 AO 1 Att 1 Par (3)	Suggest that interim IEPs be required to provide FAPE and include services comparable to those described in the child's IEP from the previous LEA.	VDOE will recommend to the BOE to retain the parental consent requirements relative to transfer students.
	1 AO 1 Att 1 LEA 1 Par 1 Sped Adm (5)	Support the provision requiring the LEAs to contact VDOE for assistance if LEAs cannot obtain a copy of the IEPs of transferring children from previous LEAs.	

Issue	Source	Comments	VDOE Response
	1 Par (1)	Opposes proposed changes because it will restrict parent involvement in ensuring autism-related services or accommodations if a student transfers to another school.	
	1 Sped Adm (1)	Supports ensuring there is no lapse in service or payment for children served under CSA when they move from one division to another.	
Consent – Transfer Students 8 VAC 20-81-120 A.2. (957 comments)	15 Adv 21 AO 3 Att 3 Brd 631Cit 3 EO 2 Int 3 LAC 1 LEA Gen 2 MD 1 OT 197 Par 3 PT 3 PTA 3 SLP 4 Sped Tch 6 Stu (901)	Oppose proposed elimination of parent consent prior to providing special education and related services to transfer students since it may permit an LEA to implement an IEP that does not offer comparable services, would not require an LEA to come to consensus on service delivery at transfer. Suggest that consulting with the parent should not preclude Virginia-specific parental consent.	<p>The proposed provisions are consistent with federal regulations and require that comparable services be provided in consultation with the parents until a new or interim IEP is developed. This provision ensures that FAPE is provided without delay upon transfer.</p> <p>The consent provided on the previous IEP indicates agreement with the services. The provision of comparable services until a new or interim IEP is developed would not require additional consent. VDOE will recommend to the BOE to retain the current parent consent requirement for an interim or new IEP.</p>
	1 Adv 50 Par 1 Stu (52)	Oppose restrictions on the parent's involvement in ensuring accommodations if the child transfers to another school.	
	1 Par 2 Sped Tch (3)	Support the elimination of parental consent before providing special education services for transfer students.	
	1 Par (1)	Opposes elimination of parent consent prior to providing special education services to transfer students, as that may restrict parental involvement in ensuring that the child's accommodations are provided, and it may lengthen the time, without parental consent, that a school has before they address a student's specific accommodations.	
Least Restrictive Environment 8 VAC 20-81-130 (294 comments)	2 Att 3 Adv 6 AO 13 Cit 1 MD 24 Par	Clarify alternative placements in B. by either adding a definition in 20-81-10 for "alternative placements" or retain examples that are currently included and that are used in the proposed definition of "special education." Not providing a definition or giving examples is likely to lead to disputes regarding the provision of alternative placements.	The placements included in the definition of "special education" are intended to provide direction on the types of placements to be considered. Specific alternatives are developed at the local level and may differ from one locality to another. The notion of LRE indicates that the less restrictive setting should be considered before more restrictive settings are discussed. Due

Issue	Source	Comments	VDOE Response
	1 PT 1 SLP 2 Stu (53)		to comments, however, VDOE will recommend to the BOE the reinsertion of federal language from 300.115(b)(1) listing alternative placements for clarification purposes.
	1 Par (1)	Opposes placing students with physical disabilities in a self-contained setting they they are capable of learning with their grade-level and age-appropriate peers.	Placement of individual students, both in academic, non-academic, and extracurricular activities, is an IEP decision with the requirements that LRE is considered. In response to comments, VDOE will recommend to the BOE the cross reference suggested for clarity.
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 SLP 2 Stu 1 PT (53)	Suggest adding a provision that cross references 20-81-100 H. with 20-81-130 A.2 regarding the need to consider nonacademic and extracurricular activities for LRE.	It is inappropriate to regulate which types of services a locality must provide and how, since the students needs must dictate the services to be provided in each LEA. As the general education setting has become more pronounced as a special education setting, the need for more restrictive settings has decreased. The way that LEAs manage and staff these services is a local decision.
	1 Par (1)	Suggests clarifying that providing students access to the general education curriculum in the LRE means more than just placing the students in the general education setting. Emphasis should be on the students learning and understanding the curriculum.	The proposed regulations provide additional clarifications regarding placement and location, complying with all federal mandates. VDOE issued guidance to the school divisions in May 2008 regarding the application of a 4 th Circuit case relative to location and placement. VODE does not believe that it is necessary to regulate this matter any further.
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Suggest replacing "if" with "where" in describing that an LEA shall "where" necessary, make arrangements with public and private institutions to ensure that LRE requirements are met. Stating "where" implies the decisions to make arrangements are not simply an LEA "yes or no" determination to make arrangements but that due diligence should be made to ensure LRE is met.	To clarify that LRE applies to preschoolers, VDOE will recommend to the BOE additional language at 8 VAC 20-81-130 .1.a. to specify that students "aged two to 21" are educated with children without disabilities.
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Suggest that language be included that clarifies that LEAs have a responsibility to ensure LRE and explore alternative methods when they do not have an inclusive public preschool.	The 2006 federal regulations clearly mandate that children with disabilities are entitled to FAPE in the LRE, and do not exclude preschool aged children with disabilities from this entitlement. [Federal Register. P 46589]

Issue	Source	Comments	VDOE Response
	3 LEA Gen 13 Prin 36 Sped Adm 19 Sped Tch 1 SW 2 PO 1 SLP 1 Supt (76)	Support distinguishing between “placement” and “location.” The IEP team determines placement, but the LEA determines the specific location for services delivery.	
	1 Par (1)	Supports allowing children to be removed from the general education setting and provided special education and related services with children with the same disability, when required.	
	1 Par (1)	Suggests that more needs to be done to ensure the continuum of alternate placements for students whose needs are not being met (i.e., self-contained special education classes, special education schools, promoting access to private schools for students with disabilities who are not able to learn in the environment/curriculum provided by the LEA).	
	1 Prin (1)	Supports proposed regulations because they will unite GenEd and Sped teachers in providing effective instruction in a consistent manner that reflects the scope of the GenEd curriculum in the least restrictive environment for students.	
	1 Par (1)	Suggests that if students are placed in a cross-categorical special education classroom, the parent(s) must be informed of other disability categories that will be placed in the classroom and have an opportunity to observe the class.	
Virginia School for the Deaf and the Blind at Staunton 8 VAC 20-81-140 (1 comment)	1 Sped Adm (1)	Supports repealing the requirement that school divisions and VSDB develop contractual agreements to ensure compliance with the federal and state special education requirements.	It the student is eligible for services at VSDB, no contract is necessary. No additional language is necessary. VDOE will recommend to the BOE to delete references to the Hampton School, based on the action of the General Assembly to close the school which the BOE closed effective July 1, 2008.
Private Schools – Parentally Placed Private School Students	1 Par (1)	Recommends requiring LEAs to report to VDOE and/or process any incidence(s) of professional malfeasance on the part of an educator licensed by the State of Virginia pertaining to the suspected maltreatment of children with disabilities and/or conduct reportable under the licensure requirements which becomes	It is up to a locality to decide to report situations in which the LEA recommends revocation of license. However, the Code of Virginia requires court clerks to notify the Superintendent of Public Instruction when a person known to be licensed by the

Issue	Source	Comments	VDOE Response
<p>8 VAC 20-81-150 C.; 8 VAC 20-81-170 E. 4. c.</p> <p>(64 comments)</p>		known to the LEA through the implementation of IDEA.	<p>Board of Education is convicted of a felony drug crime or certain felony sex crimes involving a child victim. The Code also requires (i) local school boards to develop policies and procedures to address complaints of sexual abuse of a student by a teacher or other school board employee; (ii) the Board of Education to include requirements for the denial, suspension, cancellation, revocation, and reinstatement of licensure in its regulations; (iii) notification by the local school board to the Board of Education when a licensed employee of a school board is dismissed or resigns because of certain criminal convictions or a founded child abuse or neglect case; (iv) notification by the local department of social services to the Superintendent of Public Instruction when the subject of a founded complaint of child abuse or neglect is known to hold a license from the Board of Education; and (v) the Board of Education to revoke the license of any person who has resigned because he has been convicted of a felony, sex offense, drug offense or because he is the subject of a founded case of child abuse or neglect.</p> <p>VDOE and USDOE have provided guidance to school administrators on parentally placed private school students, which includes the fact that private schools include schools that serve preschool children and require that there be a curriculum. A child care facility is not considered a private school.</p> <p>The proposed regulations are consistent with federal regulations and guidance from USDOE regarding each LEA's responsibility regarding child find, evaluation procedures, eligibility determination, and the provision of services to students including those students who are parentally placed in private schools.</p> <p>According to federal regulations, it is the responsibility of the LEA in which the private school is located to evaluate and determine eligibility. As a resident of a locality, it would be the LEA where the parent resides who is responsible for developing an IEP since that would be the school division to implement the IEP. As in all cases, if a parent believes that an IEP was not developed appropriately, they have the right to file a complaint or use mediation or request a due process hearing.</p> <p>The decision to place a student in a private school is a parental decision, and it would not be appropriate to regulate a responsibility for an LEA to address appropriateness of a parental decision.</p> <p>It would not be appropriate to require an LEA to be responsible for "policing" private schools. It is their responsibility to make child find activities accessible to students suspected of having a disability and making appropriate services available to identified students either through a service plan or an IEP.</p>
	<p>3 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu</p> <p>(54)</p>	Suggest amending the language to include private schools that do not qualify as elementary schools. Since LEAs must spend a proportionate share to provide services to children with disabilities who have been parentally placed in private elementary and secondary schools, many preschools would not qualify as an elementary school. These students would not be eligible for receiving services.	
	<p>2 Par</p> <p>(2)</p>	Recommend that following a request for screening, testing, or evaluation under IDEA, or accommodation/protection under Section 504, by a parent or teacher of a child enrolled in a private school, that the child be considered a child with a suspected disability and thereby eligible for Child Find and processing under IDEA by the LEA where the private school is located. The private school should not be authorized to determine the eligibility of a child for testing, evaluation, or special education services under IDEA.	
	<p>2 Par</p> <p>(2)</p>	Recommend that if a child, who is not a resident of the LEA, is found eligible for services, that child should remain under the cognizance of the LEA until the IEP consultative process is complete and the IEP and in-service plan has been finalized by all parties (i.e., the LEA, the private school, and the parents). The failure of any party to participate in the IEP development process will be documented in the IEP and reported to VDOE.	
	<p>1 Par</p> <p>(1)</p>	Recommends that following the development of the IEP, if the parent decides to transfer the child to the LEA of residence to receive special education services, the LEA of the private school will render full assistance to facilitate the transfer of the child. The fact that a parentally placed child is not entitled to services outside of the LEA of residence shall not preclude the requirement to facilitate the transfer of an eligible child from one public LEA to another within the State of Virginia.	
	<p>2 Par</p> <p>(2)</p>	Recommend that the LEA where the private school is located, acting as an agent of VDOE, may make a formal recommendation to the parents during IEP consultation that placement in the private school may not be in the child's best interest. The recommendation shall be documented in the IEP/IFSP and may be based on the lack of highly qualified teachers in the private school, a known lack of specific resources going to the type and severity of the disability, a lack of specific guidelines in the private school to prevent the maltreatment of children by non-certified staff/teachers, or other factors which indicate that placement in a specific private school environment may not be in the child's best interests. Parents of the parentally placed child may request such a formal recommendation in order to evaluate their child's school options.	

Issue	Source	Comments	VDOE Response
	1 Par (1)	Recommends that the LEA be responsible for reporting to VDOE any unilateral action on the part of the private school to use enrollment status or enrollment preferences to constructively deny applicable process and procedures under the IDEA or state regulation to the private school child and/or his/her parents. Such action may be considered by the LEA and/or VDOE as a basis to withhold any or all contracted services provided to the private school by the LEA under publicly funded programs and/or to suspend other forms of state licensing until corrective action, as defined by the VDOE, is taken.	The LEA where the private school is located is responsible for child find, including evaluations for students suspected of having a disability, for students enrolled by parents in private schools.
	1 Par (1)	While proposed regulations enhance the decision making process in these situations, they only give weight to the public schools and the private schools; rights of the parents are not enforceable because neither the public school nor the private school is held fully accountable.	
Discipline – General 8 VAC 20-81-160 A., I., J. (987 comments)	1 Adv 10 AO 248 Cit 2 Int 1 LAC 1 MD 81 Par 1 PO 2 PT 2 PTA 2 SLP 2 Sped Tch 1 Stu (354)	Suggest that the regulations clarify that if a student is returned to school after a disciplinary removal, the student should be returned to the original school. Now, even if the behavior is a manifestation of the child's disability, LEAs force the child to return to a different school with the same level of services.	VDOE does not believe that additional guidance or regulatory language is required. The proposed regulations are consistent with the federal regulations and provide protections for students with disabilities while providing LEAs with the necessary flexibility to ensure the safety of students and staff and to appropriately discipline a student who has violated the Code of Conduct. Both the <i>Code of Virginia</i> , at § 22.1-277, and the federal regulations permit a student's unique circumstances to be considered on a case-by-case basis when deciding whether or not to order a change in placement. VDOE will recommend to the BOE revised language to merge the requirements referenced in 8 VAC 20-81-110 F.2. with 8 VAC 20-81-160 A.
	4 Adv 2 AO 97 Cit 11 Par 1 SLP 1 Sped Tch (116)	Suggest that the regulations clarify that if a student is returned to school after a disciplinary removal, the student should be returned to the original school if that is in the child's best interest.	The proposed regulations are consistent with the federal requirements relative to a students' placement following determination that the behavioral incident was related to the students' disability. VDOE will address additional issues related to this issue in its technical assistance document on discipline. VDOE has issued guidance to LEAs regarding proper restraint and seclusion techniques. VDOE does not believe it is appropriate to further regulate this issue.
	1 Par (1)	Supports regulations that exceed federal requirements by preventing LEAs from removing students repeatedly because the behaviors were not "substantially similar." It is the LEA who has sole discretion in the determination.	There is nothing in the regulations that preclude parents and school personnel from considering behavioral approaches when a student "falls behind" in class. VDOE does not believe it is necessary to over regulate by imposing dismissal procedures or criteria for school divisions to use when referring students with disabilities to ISS. VDOE will
	1 Par	Opposes the elimination of the discipline procedures in 8 VAC 20-81-160.	

Issue	Source	Comments	VDOE Response
	(1)		<p>address issues regarding ISS and bus suspensions in its revised technical assistance document on discipline, following the final approval of these proposed regulations.</p> <p>The proposed revisions are consistent with the federal requirements relative to the hearing officer's authority and responsibility when hearing disciplinary matters. The procedures in a due process hearing involve the hearing officer hearing evidence. The standard of "preponderance of evidence" remains in the due process hearing provisions.</p> <p>VDOE disagrees with the commenter that the current regulations require the hearing officer's decision within 5 days; rather, it is 20 business days. The federal regulations now require the decision to be rendered within 10 school days.</p> <p>VDOE will recommend to the BOE to reinsert "substantially" when referencing the child's behavior resulting in injury to the child or others.</p>
	4 Cit 1 EO 3 Par (8)	<p>Generally oppose changes in this section, and support maintaining current discipline procedures. Rationales:</p> <ul style="list-style-type: none"> • They will make it easier to have a child removed if they have behavioral problems. • They remove protections for students with long-term behavioral problems. • They vest too much arbitrary authority with the LEA and encourage warehousing "problem students" rather than addressing problem behaviors through meaningful positive interventions. 	
	5 AO 1 Att 1 Cit 1 EO 1 LAC 14 Par 1 PO 1 SLP 1 Sped Tch 1 Stu (27)	Oppose the proposed provision that allows school personnel to consider any unique circumstances on a case-by-case basis when deciding whether to order a change in placement for a child with a disability that violates a code of student conduct. Suggest that the LEA personnel may abuse their discretion in disciplinary matters if this section is added.	
	1 Par (1)	Suggests school administrators and SPED teachers need to be more proactive in helping a student by adding behavioral modification or changing the methodology, when a student is falling behind in a class.	
	1 SSEAC (1)	Suggests including language similar to that in 8 VAC 20-81-110 F.2. referencing strategies and positive behavioral supports already in place be included into the general description (8 VAC 20-81-160 A.) "School personnel may consider any unique circumstances on a case-by-case basis. . . " must reflect all of the considerations of the IEP team on the record.	
	3 Adv 6 AO 2 At 13 Cit 1 MD 25 Par 1 PT 2 Stu (53)	Suggest that regulations need to clarify that case-by-case consideration to remove a child must be exercised consistently with the requirements of and may not be used to circumvent the protections in 20-80-160 and 34 CFR Section 300.530. The ability to consider unique circumstances was meant to protect children from zero tolerance rules.	
	1 SLP (1)	Recommends a revision in dismissal procedures or criteria for receiving ISS	

Issue	Source	Comments	VDOE Response
	1 Par (1)	Opposes tactics such as allowing LEA staff to use painful restraint holds on young children for any reason.	
	1 Adv (1)	Supports clarification that returning a student to the original placement means to the original school, not simply the same level of services.	
	1 Par (1)	Supports a proposed regulation change that will enforce the same basic standards of behavior for all students. Recommends more flexibility to the schools in alternate placement decision and ability to impose a "true" short term suspension.	
	6 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 28 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu (53)	Oppose proposed language in F.2.b. allowing the hearing officer to order a change in placement to an appropriate interim alternative placement if the hearing officer determines that maintaining the current placement is substantially likely to result in injury to the student or others. Instead suggest that the LEA demonstrate the need by substantial evidence (beyond a preponderance of the evidence). The LEA should be required to meet a higher burden before a hearing officer allows it to change placement. This is not federally required and should be deleted.	
	3 Adv 6 AO 2 Att 14 Cit 1 MD 25 Par 1 PT 2 Stu (54)	Oppose the elimination of factors in current regulations that require a hearing officer to consider in ordering a change in placement to an interim alternative educational setting for not more than 45 school days because current placement is substantially likely to result in injury to student and others, including the appropriateness of the student's current placement. This includes considering if the LEA made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services, and determine whether the interim alternative educational setting to which the child is long-term removed meets the services required during long-term removals. All of these factors remain an important part of the HO's decision, even if no longer contained in the federal regulations. See Light v. Parkway C-2 S.D. (8th Cir. 1994).	
	4 AO 1 Att 8 Cit 1 LAC 1 MD 19 Par 1 PT 1 Sped Tch 1 Stu	Oppose the proposed change to 10 days for a hearing officer to provide a written decision for an expedited due process decision. Suggest that the current 5 day timeline be used.	

Issue	Source	Comments	VDOE Response
	(37)		
	3 Adv 11 AO 3 Att 14 Cit 1 EO 1 LAC 1 MD 38 Par 1 PO 1 PT 1 SLP 1 Sped Tch 3 Stu (79)	Oppose the proposed deletion of the word "substantially" when defining whether the behavior is likely to result in injury to self or others. Without using "substantially likely", the use of "likely" is a violation of federal regulations and unlawfully lowers the standard.	
	6 Adv 3 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Suggest that under F. 1. and F. 3., when an expedited hearing results in a 45 day interim alternative placement or an extension, an FBA and BIP be required to address the conduct that resulted in the child's exclusion and develop new ones if they are over a year old. Also suggest that if the FBA/BIP is over a year old, the new ones not be allowed to be just a review of data.	
	3 Adv 6 AO 2 Att 14 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (54)	Support amending P.3. to require documentation within 3 business days of changes in hearing dates since expedited due process hearings are on "a fast track", and held within 20 school days.	
	3 Adv 6 AO 2 Att 14 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu	Support the provision F. 3. that provides an LEA with the option of asking the hearing officer for a 45 school day extension of the interim alternative educational setting "when school personnel believe that the child's return to the regular placement would result in injury to the student or others." Because removals can cause harm, further removals must be carefully examined and children should not remain removed unless absolutely necessary because a return to the current placement would result in injury to the child or others.	

Issue	Source	Comments	VDOE Response
	(54)		
	2 LEA Gen 12 Prin 16 Sped Adm 7 Sped Tch (37)	Support proposed provisions regarding discipline that are consistent with IDEA 2004.	
Discipline - Short-term Removals (except services) 8 VAC 20-81-160 B.2. & C.6. (55 comments)	1 Att (1)	Suggests that the IEP team, rather than the school division, determine whether discipline actions and/or short term removals constitute a pattern and change in placement.	<p>Consistent with the federal regulations, the LEA determines whether the short-term removals constitute a pattern or a change in placement. Although school personnel may consider it administratively burdensome, nothing would prevent an LEA from using an IEP team to assist in determining whether discipline actions and/or short-term removals constitute a pattern.</p> <p>USDOE limited the requirements regarding the provision of procedural safeguards notices in an attempt to balance a parent's need to understand their procedural protections, while reducing unnecessary paperwork and procedural burdens. Therefore, VDOE does not believe that additional changes are necessary.</p>
	1 Att (1)	Re-examine the definition of "short term removal" . A short term removal is one for only 10 consecutive days or multiple short term suspensions that do not constitute a pattern. It is incorrect to limit it to 10 cumulative school days and this restriction is inconsistent with C(2).	
	3 Adv 6 AO 2 Att 14 Cit 1 MD 24 Par 1 PT 2 Stu (53)	Suggest amending the proposed 20-81-160 C.3. to provide that if an LEA determines that a series of short-term removals is not a pattern, the LEA shall notify the parent(s) of the decision and provide the parent(s) with the procedural safeguards.	
Discipline - Long Term Removals & interim alternative education setting (IAES) placements (except services) 8 VAC 20-81-160 C. (716 comments)	4 Adv 6 AO 3 Att 262 Cit 1 EO 1 LAC 1 LEA Gen 1 MD 1 OT 64 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu (349)	Oppose allowing schools to place a student in an interim placement until the expiration of the 45 day period. Would support returning child to IEP placement once the MDR is completed unless the IEP team determines a change in placement is required.	<p>The proposed provision related to the 45 day placement is consistent with federal regulations and is only applicable in those situations in which the student possesses a weapon, possesses or uses illegal drugs, sells or solicits a controlled substance, or inflicts serious bodily injury to another at school or a school function. In line with federal regulations, given the nature of these disciplinary actions, a child may be removed from the current education placement for the same period of time as a child without a disability, up to 45 days, regardless of whether or not the behavior was a manifestation of the child's disability.</p> <p>The proposed provisions regarding when a pattern of behavior constitutes a long-term removal are consistent with the federal regulations regarding this issue.</p> <p>VDOE will address the issue of in-school and bus suspension in</p>

Issue	Source	Comments	VDOE Response
	3 Adv 7 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (55)	Oppose proposed provision (C.5.) that allows for LEA personnel to remove a student with a disability up to 45 days for weapon or drug offenses consistent with the provisions for a child without a disability without regard to whether the behavior is determined to be a manifestation of the disability. Suggest that if it is found to be a manifestation, the child should be allowed to return to his current placement, or an alternative placement, if the LEA and parent agree otherwise.	<p>its revised technical assistance document on discipline and students with disabilities.</p> <p>The other provisions mirror the federal requirements including the provision for the parents to receive procedural safeguards.</p> <p>The 45 day interim alternative placement is only for those situations in which certain discipline issues require a student to be removed from his/her IEP placement for disciplinary reasons. In this instance, a parent would have the right to request an expedited due process hearing or request mediation if they disagree with the placement. Current regulations also permit a 45 day alternative placement.</p>
	1 Att (1)	As worded, this section suggests that a student who has a weapon or drug offense may not be disciplined for more than 45 school days even if no manifestation is found. Please state that this provision does not limit the authority should the LEA impose additional discipline in cases where the misconduct is found not to be a manifestation.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (54)	Suggest amending the proposed 20-81-160 C.5. to address "special circumstances" to provide that "school personnel may remove a child with a disability to an appropriate interim alternative educational setting for no more than the amount of time that a child without a disability would be subject to discipline. . ." The team should be free to consider extenuating circumstances and reduce the removal period if appropriate.	
	6 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 29 Par 1 PO 1 PT 1SLP 1 Sped Tch 1 Stu (54)	Oppose proposed changes (C.2.b.) that result in a long-term removal when short-term removals constitute a pattern due to behavior that is substantially similar to the behavior in previous incidents and supports an MDR if the child has been suspended for 10 days or more in a school year without regard to whether behavior is substantially similar.	
	6 AO 2 Att 1 Cit 1 EO 1 LAC	Oppose the proposed provision (C.3.) that provides for the LEA to determine on a case-by-case basis whether a pattern of removals constitutes a change in placement, because the LEA could abuse its power.	

Issue	Source	Comments	VDOE Response
	14 Par 1 PO 1 SLP 1 Sped Tch 1 Stu (29)		
	1 AO 1 Att 1 Par (3)	Support language that provides direction regarding in-school and bus suspensions and when they count toward the pattern of removal that constitutes a long-term suspension.	
	1 Par (1)	Supports requiring that a psychologist or psychiatrist be required to be part of the FBA team that evaluates behavior and provides BIPs.	
	3 Adv 6 AO 2 Att 14 Cit 1 MD 24 Par 1 PT 1SLP 2 Stu (54)	Request C.2.b. define “substantially similar” so that it incorporates behaviors caused by the child’s disability or that had a direct and substantial relationship to it.	
	6 AO 2 Att 17 Cit 1 EO 1 LAC 1 MD 29 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu (62)	Oppose the proposed deletion of current language that requires an LEA to notify the parents with the procedural safeguards notice not later than the date on which the decision to long-term remove the student. Support returning this language to ensure that parents will receive the procedural protections.	
	6 AO 3 Att 9 Cit 1 EO 1 LAC 1 MD 28 Par 1 PO	Oppose proposed language that allows an exception to the IEP team determination including parents, for an interim alternative 45 day placement.	

Issue	Source	Comments	VDOE Response
	1 PT 1 SLP 1 Sped Tch 1 Stu (54)		
Discipline -- Services During Removal (except FBA and BIP) 8 VAC 20-81-160 B. 2. & C. 6. (969 comments)	13 Adv 21 AO 3 Att 607 Cit 2 Int 1 LAC 1 LEA GEN 1 OT 142 Par 1 PO 2 PT 2 PTA 3 SLP 2 Sped Tch 4 Stu (805)	Oppose eliminating the requirement to provide services designed to enable the child to progress in the general curriculum for students who are under disciplinary removal (rather than the proposed requirement that would enable the child to "continue to participate" in the general curriculum). IDEA 2004 does not contemplate the provision of "FAPE-light" or less than FAPE, even for children removed for additional short-term removals.	<p>The proposed provisions are consistent with federal regulations and require that a child with a disability who is long-term removed:</p> <ul style="list-style-type: none"> continue to receive educational services so as to enable the student to continue to participate in the general educational curriculum, although in another setting; continue to receive those services and modifications including those described in the child's current IEP that will enable the child to progress toward meeting the IEP goals; and receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur. <p>Consistent with the federal regulations, the proposed regulations require:</p> <ul style="list-style-type: none"> that the IEP team determines the services needed for the child with a disability who has been long-term removed; that an LEA is not required to provide services during the first 10 days in a school year that a child is short-term removed; and for additional short-term removals, services are determined by school personnel. <p>Students are not entitled to services during the first 10 days of suspension. Thereafter, the receipt of services is dependent on the school personnel's review with the special education teacher(s). The proposed provision is consistent with the current regulations. For those who are long-term removed (which may include cumulative suspensions), the requirement remains for the provision of services.</p>
	1 Par (1)	Oppose elimination of services to students removed for more than 10 days.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (54)	Suggest that B.2.b. be amended to require that a child who has been removed for 10 days and experiences a subsequent removal of less than 10 school days that is not a change in placement begin receiving educational services on the 11th cumulative day of removal.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (54)	Support the proposed provision B. 2. b. that requires the LEA to make the determination about services in consultation with the child's special education teacher.	

Issue	Source	Comments	VDOE Response
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Suggest amending 20-81-160 C.a.(1) and a.(2) to include language ensuring that a student removed long-term would receive services so as to "receive a free appropriate public education as required by IDEA". Also suggest that the services be provided "to" (rather than "that will") enable the child to progress toward meeting the IEP goals . . . " "That will" implies that LEAs can determine which services the child will receive and denies the child of FAPE.	
	1 Att 1 Par (2)	Support adding a requirement for the IEP team to determine the services provided during short term and or long-term disciplinary removal actions, irrespective as to whether or not there is any consideration for a change in placement.	
Discipline -- Functional Behavioral Assessments (FBA) & Behavioral Intervention Plans (BIP) 8 VAC 20-81-160 C. 6. a. (3) 8 VAC 20-81-160 D. 6. (1161 comments)	4 Sped Adm (4)	Support the proposed change to remove the 11th day rule for mandatory use of FBAs and BIPs.	The proposed provisions related to the use of FBAs and BIPs are consistent with federal regulations, including the deletion of the previous requirement that a FBA be triggered by the 11 th cumulative day of disciplinary removal in a school year. VDOE believes that adequate protections are provided to students with disabilities while providing LEAs with the flexibility to develop FBAs and BIPs that are responsive to the child's unique needs. LEAs continue to be required to appropriately review and revise a child's IEP, if the child's behavior is impeding their learning or that of others. Parents remain a member of the IEP team, and therefore, may fully participate in the development of FBAs and BIPs. In addition, if the FBA meets the requirements for an "evaluation" as outlined in federal and state special education regulations, the parent would be entitled to an independent education evaluation. VDOE will recommend added language to clarify this point.
	1 Sped Tch (1)	Supports proposed provisions regarding the role of parents on the FBA team.	
	5 Adv 11 AO 339 Cit 2 Int 90 Par 1 PT 3 PTA 3 SLP 2 Sped Tch 3 Stu (459)	Oppose the proposed elimination of the requirement that a BIP/FBA be completed or modified for any student with a disability suspended long-term.	
	7 Adv 14 AO 4 Att 16 Cit 1 CSB 1 EO 1 LAC 1 MD 71 Par 1 PT 1 PTA 1 PO 2 Psy	Support maintaining the current requirement that a FBA and BIP must be developed once a student with a disability has been suspended from school for more than 10 days in a school year.	

Issue	Source	Comments	VDOE Response
	1 Sped Tch 4 Stu (126)		
	1 AO 2 Cit 1 EO 14 Par (18)	Oppose the removal of the parents from the FBA team.	
	1 Adv 1 Cit 3 Par (5)	Support retaining all requirements in the current Virginia regulations for conducting FBAs.	
	1 AO (1)	FBAs should be required for students whose behavior impedes their ability to learn, or the ability of others to learn. Information should be part of the IEP instead of a document developed and may or may not be used consistently.	
	1 Adv 3 AO 1 Att 11 Cit 1 EO 1 MD 57 Par 1 PO 1 PT 1 Sped Tch 2 Stu (80)	Oppose proposed changes regarding FBAs as they reduce the parents' ability to participate in the special education process.	
	1 AO 4 Par (5)	Oppose changes regarding FBAs and BIPs as they will deny parents the right to an Independent FBA.	

Issue	Source	Comments	VDOE Response
	1 Par (1)	Suggests that FBA be renamed Functional Behavioral Evaluations and parents should have the ability to request IEEs if they disagree with the evaluation by the LEA. FBE should be performed before any manifestation determination can be made and for students who have been suspended for 5 or more days. BIP should be in place to address inappropriate behavior as it is important to understand why a child is not acting appropriately as soon as possible.	
	3 Adv 6 AO 2 Att 14 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (55)	Request revision of D.6.a to require that the school district consider and implement positive behavioral strategies in developing and reviewing BIPs.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (54)	Suggest that if the child's behavior is not a manifestation of the child's disability, the IEP team should be required to review positive behavioral strategies and develop an appropriate BIP after an FBA.	
	6 Adv 12 AO 4 Att 28 Cit 2 MD 50 Par 2 PT 2 SLP 4 Stu (110)	Suggest amending D. 6. to require an FBA and BIP be developed to address the conduct that resulted in the child's exclusion. If an existing FBA or BIP is over one year old, suggests a new one be developed and not be limited to reviewing existing data in the file.	
	3 Adv 6 AO 2 Att 14 Cit 1 MD 24 Par	Suggest that proposed provision D. 7., regarding when an IEP team determines that the behavior was not a manifestation of the disability, that an FBA and BIP be required to address the misconduct and if there is an existing FBA and BIP over a year old, new ones must be developed that cannot be a review of existing data.	

Issue	Source	Comments	VDOE Response
	1 PT 1 SLP 2 Stu (54)		
	1 Att (1)	Opposes allowing schools to eliminate the requirement for the IEP team to convene to conduct an FBA and implement or modify a behavioral plan for any child under a long-term removal. Students with disabilities who have behaviors that warrant removal require greater intervention.	
	1 Cit (1)	Requests revision to require that when a child is removed for a 45-day period, an FBA/ BIP be developed to address the conduct that resulted in the child's exclusion, and that if there is an existing FBA or BIP that is over one year old, a new one must be developed.	
	3 Adv 6 AO 2 Att 14 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (54)	Support proposed regulation in D.2 requiring that the MDR team convene immediately, if possible but not later than 10 school days after the decision to change the placement of the child is made.	
	1 Sped Adm (1)	Not all students with disabilities need FBAs and BIPs. To require IEP teams to meet blanket requirements is not beneficial.	
	3 Adv 6 AO 2 Att 14 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (54)	Oppose elimination of current regulations that require that if a child with a BIP is removed for 10 school day and then subjected to a further short-term removal that is not a change in placement, then the BIP will be reviewed and modified if one or more IEP team members believe it necessary.	

Issue	Source	Comments	VDOE Response
	1 LEA 1 Sped Adm 1 Sped Tch (3)	Support proposed regulations regarding discipline that do not exceed federal regulations.	
	3 LEA Gen 1 PO 12 Prin 2 SLP 33 Sped Adm 22 Sped Tch 1 Sup (74)	Support the proposed regulations as written and opposes any additional requirements that would mandate IEP teams to develop FBAs and BIPs for every student with an IEP who is suspended.	
Discipline -- Manifestation Determination Review (MDR) - (except FBA and BIP) 8 VAC 20-81-160 D. (227 comments)	1 Att (1)	Supports adding a requirement that would allow the IEP team and/or the parent to request a manifestation determination review for short term removals and/or discipline actions.	<p>The proposed provisions are consistent with the federal special education regulations, and the VDOE believes the federal regulations provide sufficient parameters for the MDR decision, and that no additional clarification is necessary.</p> <p>The regulations do not preclude the parent or another IEP team member from requesting an IEP meeting to consider manifestation determination for disciplinary actions related to short-term removals. VDOE will clarify provisions related to membership and roles through technical assistance guidance and documents. A recent Virginia federal court case does not give parent and LEA equal status in determining the relevant members; the LEA makes the determination. This information will be included in VDOE's technical assistance document on discipline.</p>
	1 Sped Adm (1)	Suggests that "relevant members of the IEP team as determined by the parent and LEA" needs to be clarified as it relates to membership of the group making the MDR determination. Must the parent and the LEA agree regarding who is a relevant member of the group?	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (54)	Oppose the elimination of the requirement that IEP teams should determine whether the IEP is appropriate and should continue to look at the current placement.	
	1 AO 1 Att 1 Par (3)	Oppose changes to the current VA regulations which change the requirements for determining whether a student's behavior was a manifestation of the disability. Suggest that the federal language does not fully ensure that children will not be disciplined for behaviors that either are rooted in their disabilities or that occur because their disabilities were not being adequately addressed in school.	
	1 AO 1 Att 1 Par (3)	Support proposed requirement for MDR/IEP teams to document the reasons for the answers to the each question they must address.	

Issue	Source	Comments	VDOE Response
	3 Adv 6 AO 2 Att 14 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (55)	Request revision of D.2 to specify that in choosing manifestation determination IEP team members, school districts must work in good faith with the parents. Parents or LEAs must have the discretion to include all individuals with special knowledge or expertise regarding the child-particularly regarding how a student's disability can impact behavior and understanding the consequences of behavior.	
	3 Adv 6 AO 2 Att 14 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (55)	Request revision of D.3 to state that the review of all relevant information in the child's file include all of the child's education records, as well as new information that parents or school districts have.	
	3 Adv 6 AO 2 Att 14 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (55)	Request revision of D.4 to specify that behavior would be a manifestation of the child's disability if the behavior has a direct and substantial relationship to the disability and if the disability significantly impairs the child's behavior control.	
Discipline – Protection for Students Not Yet Eligible 8 VAC 20-81-160 H. (190 Comments)	3 Adv 3 Att 12 AO 14 Cit 1 EO 1 LAC 1 MD 1 PO 1 PT 41 Par 1 SLP 1Sped Tch 2 Stu (82)	Oppose the proposed deletion of language indicating that the LEA had knowledge if "the behavior or performance of the student demonstrates the need for these services," because these factors are important for schools to consider.	<p>The language in the proposed regulations regarding when a LEA is deemed to have a "basis of knowledge" was specifically developed to comply with IDEA 2004, and the factors identified in the statute.</p> <p>USDOE, in response to a similar comment regarding the insertion of a timeline regarding when a child has previously been evaluated and determined ineligible, and whether or not the LEA has a "basis of knowledge," stated, "Many commenters recommended that an evaluation and eligibility determination that is more than three years old not prevent deeming an LEA to have a basis of knowledge...The intent of Congress in revising section 615(k)(5) of the Act was to 'ensure that schools can appropriately discipline students, while maintaining protections</p>

Issue	Source	Comments	VDOE Response
	3 Adv 6 AO 2 Att 14 Cit 1 MD 26 Par 1 PT 1 Stu (54)	Federal regulations deem an LEA knowledgeable about a child's disability for discipline purposes if the parent provides notice of his/her concerns that the child needs special education and related services. A child should not forego the protection of knowledge just because a parent cannot write or has a disability preventing a written statement.	for students whom the school had valid reason to know had a disability' and that the provisions in the Act should not have the "unintended consequence of providing a shield against the ability of a school district to be able to appropriately discipline a student.' (S. Rpt. No. 108–185, p. 46). We are not including time restrictions, as suggested by the commenters, to the exceptions in paragraph (c) of this section because we believe such restrictions are unnecessary and could have the unintended consequence of hindering the school's ability to appropriately discipline a child." (Federal Register, p. 46727) VDOE supports this position, and similarly, declines to insert the recommended language.
	3 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (54)	Suggest clarifying the provision indicating the LEA would not have knowledge if the child had previously been evaluated to say that "(b) the child has been evaluated within the last 3 years . . ." and determined ineligible for special education and related services.	
Educational Records 8 VAC 20-81-170 A.1.a. and G. (59 comments)	3 Adv 6 AO 2 Att 15 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (56)	Suggest amending G.1.a. to require that an LEA must comply with a request for educational records within 5 business days, versus 45 calendar days. 45 calendar days is unnecessarily lengthy and parent requests for records are usually time sensitive.	The requirements include language which requires the LEA to provide the records without unnecessary delay and before certain meetings if requested. The 45 days, consistent with FERPA requirements at §99.10(b), is the latest that LEAs must provide information, which could require a search in another location if the files are older and no longer being used. There are state requirements that govern when files may be destroyed. It is up to an LEA to determine where files are located as long as it is clear in the school's record where other records are located, such as a clinic. VDOE agrees with the commenter's suggestion regarding the preservation of e-mails in a child's education record. The electronic correspondences (e-mails and facsimiles) related to the child regarding such matters as IEP meetings are to be maintained in the child's education record. VDOE will recommend to the BOE revised language to include this fact. VDOE does not wish to regulate matters of testing documents. This issue, including test protocols, is under VDOE's Guidelines for the Management of the Student's Scholastic Record.
	1 Par (1)	Suggests including a requirement preventing LEAs from destroying e-mail and testing education records prior to due process proceedings.	
	1 Par (1)	Suggests including a requirement that all education records be available in one location for parental review.	
	1 Att (1)	Suggests rather than simply advising of a termination of rights, the parents should be required to produce the legal documentation. Something this important should	

Issue	Source	Comments	VDOE Response
		not be entrusted to an oral conveyance.	VDOE agrees that additional language is needed regarding termination of rights.
Independent Educational Evaluation (IEE) 8 VAC 20-81-170 B. (55 comments)	6 AO 3 Adv 2 Att 14 Cit 1 MD 25 Par 1 PT 1SLP 2 Stu (55)	Oppose proposed 2e, "A parent is entitled to only one IEE at public expense." It could be interpreted as more restrictive than the federal regulations in that it appears to limit the entitled to an IEE to a single component, rather than the comprehensive evaluation.	An evaluation is a process by which it is determined whether a child has a disability and the nature and extent of the special education and related services that the child needs. Historically, in Virginia, there have been questions about the nature and frequency of the parent's entitlement for an IEE. Specifically, if multiple assessments were completed as part of the evaluation process (ie., psychoeducational, sociological, speechlanguage), was the parent entitled to a separate IEE for each assessment (ie. component) which was completed during the evaluation cycle, or was the parent required to select only one of the assessments for purposes of an IEE? The proposed regulations were intended to clarify that a parent is entitled to an IEE for <u>each</u> assessment that was completed during the evaluation process, with which the parent disagrees. In accordance with federal regulations, an LEA may not limit a parent's request for an IEE to one section of a specific assessment or evaluation component.
Prior Written Notice (PWN) 8 VAC 20-81-170 C. (892 comments)	5 Adv 15 AO 3 Att 548 Cit 1 Con 2 EO 2 Int 1 LAC 1 LEA Gen 1 MD 1 OT 142 Par 1 PO 2 PT 2 PTA 3 SLP 3 Sped Tch 3 Stu (736)	Oppose proposed limitations to providing prior written notice and support the requirement for prior written notice as often as it is currently, including at the time parental consent is obtained.	VDOE disagrees with adding requirements to this section. The 1999 federal regulations included a provision that specified that if the prior written notice related to an action that also required parental consent, the LEA could provide notice at the time of requesting parental consent. This language was removed from the federal regulations and that change was mirrored in the proposed Virginia regulations. Because parental consent cannot be requested without the provision of prior written notice, the result does not limit or eliminate the need to provide prior written notice when the LEA proposes or refuses an action that requires parental consent. Given that the subject matter of the prior written notice will vary depending on the unique circumstances, so to may the timing for the provision of prior written notice need to vary. Therefore, it is not practical to adopt a specific timeline for the provision of prior written notice.
	4 Adv 2 AO 32 Cit 6 Par 1 SLP (45)	Oppose the proposed limitation on when LEAs must provide PWN, including when the IEP team cannot come to consensus.	

Issue	Source	Comments	VDOE Response
	1 Par (1)	Opposes any change that would allow the school to change services without parental notification.	
	1 Cit (1)	Supports amending C. to provide that prior written notice must be given to parents 5 business days before the action proposed instead of the phrase "reasonable time".	
	1 AO (1)	Suggests the draft regulations regarding PWN dilute the federal requirements.	
	1 Par (1)	Supports including language that if an LEA decides not to evaluate a child at the parent's request, PWN be given, indicating the availability of an IEE at public expense, and notice that the LEA may pursue due process if it believes the parents IEE request is unfounded.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (54)	Recommend amending C. 1. to note that PWN shall be given to the parent within a reasonable time, "but in no case more than 24 hours before or after the local educational agency...." Providing a specific timeline will alleviate misunderstandings and prevent a delay in filing for Due Process, if necessary.	
	6 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 28 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu (53)	Oppose the proposed deletion of the word, "test" from the list of items required to be described and used as a basis for the proposed or refused action. Suggest that the LEA should be able to use all types of evaluation procedures, including tests taken by the child.	
Procedural Safeguards Notice 8 VAC 20-81-170 D.	1 Par (1)	Opposes any changes to the current procedural safeguards.	The changes regarding the provision of the Procedural Safeguards Notice comply with statutory language outlined in IDEA 2004, and its federal implementing regulations, which was intended to balance a parent's need to understand their procedural protections, while reducing unnecessary paperwork
	3 Adv	Oppose the deletion of the requirement to provide the procedural safeguards	

Issue	Source	Comments	VDOE Response
(133 comments)	11 AO 3 Att 15 Cit 1 EO 1 LAC 38 Par 1 PO 1 SLP 1 Sped Tch 1 MD 1 PT 2 Stu (79)	notice with each notification of an IEP meeting and for each reevaluation of the child. It is important for parents to be fully aware of their rights.	and procedural burdens. Therefore, VDOE does not believe that additional changes are necessary.
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support revising the language in D. 1.e. "On the date on which the decision is made to take a disciplinary action, including a disciplinary removal..." rather than "to make a disciplinary removal."	
Consent – General 8 VAC 20-81-170 E (750 comments)	1 AO 3 Par (4)	Support current parent consent provisions.	Because Virginia has long required parent consent for situations not required by federal regulations, the Board of Education had proposed that all consent provisions remain except for full or partial termination of services. However, in response to the public comments on parent consent, VDOE will recommend to the BOE to retain the current parent consent requirements. The definition of parent is consistent with state and federal law and regulations and includes foster parents under specified conditions. The changes regarding the LEA's responsibility to invite a representative of any participating agency that is likely to be responsible for providing or paying for secondary transition services was proposed to comply with changes in the federal regulations. VDOE does not believe that it is feasible to require that every "agreement" be in writing. Specific guidance from USDOE has indicated that written agreements are not always required. However, parties may opt to reduce their agreement to writing to memorialize their discussions.
	2 Par 1 Sped Tch (3)	Oppose the elimination of parental consent prior to providing special education services to students with disabilities.	
	10 Adv 4 AO 3 Att 2 Brd 81 Cit 3 EO 2 Gen ed 1 Indiv 1 LAC 3 LEA Gen 154 Par 1 PO 2 Psy 1 SLP 1 Sped Adm	Oppose the elimination of the parent's right to consent in the IEP process, including the parent's right to consent to any change in their child's IEP, and before IEP services are partially or completely terminated.	

Issue	Source	Comments	VDOE Response
	2 Sped Tch 2 Stu (273)		
	1 Adv 10 AO 2 Att 253 Cit 2 Int 1 MD 106 Par 1 PO 2 PT 3 PTA 2 SLP 2 Sped Tch 2 Stu (387)	Support maintaining current Virginia-specific consent provisions, including consent for initial eligibility, initial implementation of an IEP and any changes in an IEP, and for termination of special education and related services.	
	2 Cit 1 Guid 1 Prin 1 Psy 3 Sped Adm 4 Sped Tch 1 SLP (13)	Support parent consent only consistent with federal requirements. Oppose parent consent in excess of federal requirements. These requirements are particularly burdensome in the termination of students whose assessments and progress no longer warrant special education, causing significant personnel and financial impact on LEAs.	
	1 Sped Adm (1)	Supports the proposal that foster parents are not allowed to provide consent for services unless rights of natural parent are terminated. To allow such is a conflict of interest. Foster parents receive money for keeping foster children and regardless of their level of commitment, a surrogate should be appointed.	
	1 Adm 1 Par 2 Prin 6 Sped Adm 2 Sup (12)	Oppose parental consent in excess of federal requirements. These requirements are particularly burdensome in the termination of students, whose assessments and progress no longer warrant special education, causing significant personnel and financial impact on LEAs.	
	1 Cit (1)	Supports reinserting language from current E. 1. into proposed regulations regarding inviting to an IEP meeting a representative of any participating agency that is likely to be responsible for providing or paying for secondary transition services.	

Issue	Source	Comments	VDOE Response
	3 Adv 2 Att 6 AO 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (54)	Support Proposed regulation E. 1. f. regarding the requirement for parental consent before inviting a representative of a participating agency to an IEP meeting.	
	1 Sped Adm (1)	Opposes proposed changes that include the phrase, "without parental consent."	
	1 AO (1)	To avoid conflicts, supports the inclusion of language that any "agreement" must be in writing, not just "consent."	
Consent – When not required 8 VAC 20-81-170 E.2. (3 comments)	3 Par (3)	Oppose the proposed provision that does not require consent for the review of existing data as part of an evaluation/reevaluation, and for screenings to determine appropriate instructional strategies. Support requiring parental consent in these cases because they are IEP team considerations.	The proposed provisions are consistent with federal regulations and allow the use of existing data to inform IEP decisions. Therefore, VDOE does not believe the suggested language is necessary.
Consent -- Documenting Reasonable Measures 8 VAC 20-81-170 E. 8. (1 comment)	1 Sped Adm (1)	Supports the continued requirement for parental consent for revisions to an IEP unless parents do not respond or participate when requested to address changes needed to the IEP. Suggests that regulations be specific about attempts required before being able to move ahead with changes.	VDOE does not believe that the suggested change is necessary. Local policies and procedures will need to detail how a locality will document reasonable measures to attain parent consent. The basic framework in these proposed regulations is required in current practice and provides sufficient detail for LEAs to follow.
Consent – FBA (764 comments)	7 Adv 12 AO 3 Att 589 Cit 2 Int 1 MD 1 OT 127 Par 1 PO 2 PT 2 PTA 3 SLP	Oppose the development of an FBA without parental consent.	<p>Consistent with federal regulations and guidance from USDOE, the proposed regulations continue to require parental consent for a functional behavioral assessment involving the LEA obtaining as new evaluations, unless the FBA is a review of existing data.</p> <p>Consistent with federal regulations, parents continue to be a vital member of the IEP team, and therefore, an important participant in the development and review of FBAs.</p> <p>VDOE will recommend to the BOE additional language in 8 VAC 20-81-160 D. clarifying when an FBA involves an evaluation.</p>

Issue	Source	Comments	VDOE Response
	2 Sped Tch 2 Stu (754)		
	1 Adv 2 Brd 1 Cit 2 EO 4 Par (10)	Oppose the elimination of the parents as a participant in the development of the FBA/as a member of the FBA team.	
Insurance – Use of Private or Public Insurance, including Medicaid 8 VAC 20-81-170 E.1.e., & F.; 8 VAC 20-81-300 (54 comments)	3 Adv 6 AO 2 Att 14 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (54)	Support implementing 8 VAC 20-81-300 as proposed.	This provision reflects the federal regulations.
Procedural Safeguards – Electronic Mail and Signature 8 VAC 20-81-170 H. and I. (5 comments)	4 Par (4)	Support the option to make notices of due process and the procedural safeguards notice available electronically.	These provisions should provide greater flexibility, and therefore, are intended to improve the quality of communications between the parties, while eliminating any unnecessary exchange of paper documentation.
	1 Par (1)	Supports the option for electronic signatures.	
Age of Majority – Transfer of Rights 8 VAC 20-81-180 (110 comments)	3 Adv 6 AO 2 Att 14 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (55)	Support amending the timeline for initial eligibility for special education if the student will be reaching the age of majority to include 60 calendar days, rather than 65 business days to be consistent with previous recommendations regarding the timeline for eligibility determination.	The 65 business day timeline is one which has a long-standing history in Virginia. To shorten this timeline would not allow LEAs adequate time and would have major fiscal implications. The proposed regulations require notification via the IEP meeting and are consistent with federal regulations. If parents are not present at the IEP meeting, they are entitled to receive a copy. As noted in the IEP provisions, VDOE agrees and has inserted language regarding parental notification.
	3 Adv 6 AO 2 Att 14 Cit 1 MD	Support retaining the current requirement for a statement of notification to be provided to both students and parents at least one year prior to the student's 18 th birthday noting that educational rights transfer to the student at the age of majority. The proposed regulations require that a statement be included in the child's IEP, but it does not state that a parent has been notified or include a	

Issue	Source	Comments	VDOE Response
	25 Par 1 PT 1 SLP 2 Stu (55)	timeline for the notification.	
Dispute Resolution – General (3 comments)	1 Par (1)	Supports restricting VDOE from misrepresenting federal citations.	VDOE does not believe it is necessary to further regulate this area.
	1 Par (1)	There should be a consequence for giving false information during a due process or with regard to a complaint.	
	1 Par (1)	Supports LEAs being required to provide information requested by the hearing officer or compliance specialist in a timely manner or the LEA's evidence would not be considered.	
Mediation 8 VAC 20-81-190 (127 comments)	1 Att (1)	Suggests requiring VDOE to review and approve mediation agreements for compliance with its regulations as to the rights of the child.	<p>The proposed provisions are consistent with the federal regulations, including the requirement for confidentiality and the use of state or federal courts to enforce mediation agreements. While States have the option of allowing resolution agreements and mediation agreements to be enforced through other mechanisms, it is not feasible for VDOE to assume this responsibility due to the specific nature of contract law that is presumed by mediation agreements.</p> <p>Consistent with federal regulations, if the mediation session concludes with a written, signed agreement, that agreement is legally enforceable in any state or federal court of competent jurisdiction.</p> <p>Consistent with federal regulations, VDOE does not support allowing discussions occurring during mediation to be used in due process hearings since this would inhibit the success of the mediation process.</p> <p>It would be inappropriate for the mediator to attend school meetings subsequent to mediation. The role of the mediator is to facilitate an agreement which is then implemented by the two parties.</p> <p>Language is already included indicating that mediation cannot be used to deny or delay a due process hearing.</p>
	1 Att (1)	Suggests that VDOE serve as an optional mediation agreement enforcement entity as an alternative to parents going to court.	
	1 PRC (1)	Supports confidentiality in mediation.	
	2 Sped Adm (2)	Support that VDOE require parties to sign a confidentiality pledge to ensure that decisions during mediation remain confidential, irrespective of the mediation results.	
	4 Par (4)	Support that mediation should conclude with a legally binding agreement.	
	4 Par (4)	Oppose the requirement that discussions occurring during mediation cannot be used in a due process hearing or civil proceeding.	
	3 Adv 7 AO 2 Att 14 Cit 1 MD 26 Par 1 PT 1 SLP	Suggest adding language that would allow mediators to attend school meetings subsequent to mediation upon agreement between parents and schools. This involvement would help facilitate agreement and avoid the need for further mediation or later litigation.	

Issue	Source	Comments	VDOE Response
	2 Stu (57)		
	3 Adv 7 AO 2 Att 14 Cit 1 MD 26 Par 1 PT 1 SLP 2 Stu (57)	Suggest adding the following language regarding mediation: "Such a meeting cannot be used to delay or deny a due process hearing." This addition would provide clarity related to this requirement.	
Complaints Process 8 VAC 20-81-200 (93 comments)	1 Att (1)	Suggests that the complaints process be amended to allow parents to use it as a dispute recourse for discipline matters instead of making the only dispute option a due process hearing.	<p>The proposed regulations mirror the federal regulations. Because of the complexity of issues related to certain discipline cases, the use of the due process system may be the most appropriate. However, any alleged violation of the state or federal regulations may be reviewed using the complaint resolution procedures. The complaint process would determine whether or not procedural violations occurred during substantive determinations.</p> <p>Consistent with federal regulations, it is the responsibility of the person filing the complaint to provide accurate contact information for the child about whom the complaint is filed.</p> <p>VDOE will take under advisement the posting of complaint decisions.</p> <p>In accordance with federal regulations, exceptions for timelines have not been included.</p> <p>The proposed regulations indicate the right of each party to appeal the decision to VDOE within 30 days of the issuance of a decision. Procedures will be developed by VDOE and need not be included in the regulations.</p> <p>The facts associated with complaints may be used in due process hearings. Hearing officers have the authority to determine findings in due process hearings on issues raised in a complaint.</p> <p>Inappropriate conduct on the part of a teacher is the responsibility of the LEA and the local School Board. As such, they have the right and responsibility to report an incident which is suspected to be abusive to the Department of Social Services and take appropriate action. Additionally, local school boards may petition the BOE for licensure revocation of school personnel for improper conduct, under Virginia Teacher</p>
	1 AO (1)	Suggests that the homeless liaison be included in determining the available contact information for complaints.	
	14 AO 3 Att 16 Cit 1 LAC 1 EO 1 MD 39 Par 1 PO 1 PT 1 SLP 1 Sped Tch 3 Stu (82)	Oppose proposed deletion of language that requires LEAs to respond and initiate corrective action within 15 business days from the date of notice of noncompliance. Without a timeframe, the LEAs could improperly delay taking corrective action.	
	2 Par (2)	Suggest adding a requirement for VDOE to post Letters of Finding on the web-site.	
	1 AO 1 Att 1 Par (3)	Oppose eliminating the exceptions to extending time limitations for complaints beyond one year and suggest maintaining the exceptions currently in the regulations that allows VDOE to determine that a longer period of time is reasonable under certain circumstances.	
	1 Att (1)	No procedures for appeals are included and would need to be adopted through the regulatory process. This provision will not affect the authority of the courts to	

Issue	Source	Comments	VDOE Response
		review the decisions in the case of appeals to court.	Licensure requirements.
	1 Cit (1)	Suggests permitting state complaints to be admissible in due process hearings for both parents and LEAs.	<p>Separate regulations for private schools dictate the parameters of their responsibility. As they pertain to these regulations, the LEA responsible for the student has the responsibility for ensuring FAPE for the child. If the private school is not fulfilling its responsibilities, it is the responsibility of the LEA to reconcile issues or secure another private location for the student.</p> <p>The restoration of the language outlined in the 2002 regulations at 8 VAC 20-80-78 D. 4. is not appropriate. Specifically, depending on the nature of the issues involved in a parent's complaint VDOE outlines specific timelines for the initiation of corrective action that varies depending on the nature of the needed corrective action.</p>
	1 Par (1)	Suggests adding the following clarification, "The LEA is responsible for reporting to the SEA and/or processing any incidence(s) of professional malfeasance on the part of an educator licensed by the State of Virginia pertaining to the suspected mistreatment of children with disabilities and or conduct reportable under license requirements which becomes known to the LEA through the implementation of the IDEA."	
	1 Par (1)	Suggests adding the following, "The LEA is responsible for reporting to the SEA any unilateral action on the part of the private school to use enrollment status or enrollment preferences to constructively deny applicable process and procedures under the IDEA or state regulation to the private school child and/or his/her parents. Such action may be considered by the LEA and/or the SEA as a basis to administratively withhold any or all contracted services provided to the private school by the LEA under publicly funded programs and/or to suspend other forms of state licensing until corrective action, as defined by the SEA, is taken."	
Due Process – Moving Administration from Supreme Court of VA to VDOE 8 VAC 20-81-210 A. & B. (1077 comments)	21 Adv 27 AO 8 Att 708 Cit 4 EO 2 Int 2 LAC 1 LEA Gen 1 MD 1 OT 165 Par 1 PO 1 Priv 1 Psy 2 PT 4 PTA 4 SLP 1 Sped Adm 4 Sped Tch 8 Stu (966)	Oppose moving the management of hearing officers from the Supreme Court to VDOE. Rationales: <ul style="list-style-type: none"> Concern about the appearance of a conflict of interest. VDOE is not in a neutral position between the parties. Due process must be impartial, and under VDOE, the due process system would be perceived as being aligned with LEAs, and therefore, "tainted." To rule on behalf of a parent, the hearing officer would have to rule against its employer, VDOE. 	<p>The proposed changes were responsive to the significant number of concerns from parents, school personnel, parent and school board attorneys, Virginia Code Commission, and hearing officers regarding the ineffectiveness of the current hearing officer system. Concerns relate to the management of hearings; violation of timelines; poorly written decisions; and hearing officers not being assigned enough hearings to maintain the necessary knowledge of special education law.</p> <p>The proposed revision was intended to strengthen VDOE's ability to manage a more efficient system and increase training requirements, while maintaining hearing officer impartiality. Specifically, to improve the recruitment, training, and evaluation of hearing officers and in order to streamline the process for a locality to secure the services of a hearing officer, the proposed regulations would have shifted responsibility for the implementation of the due process hearing system exclusively to VDOE, rather than sharing the responsibility with the Supreme Court of Virginia. To ensure compliance with federal due process requirements, while maintaining an effective and efficient due process system, VDOE's responsibilities would have included:</p> <ul style="list-style-type: none"> the establishment of procedures for recruitment, selection, and appointment; training; and evaluation and determinations regarding continued
	1 Att 1 LEA 3 LEA Gen 1 PO	Support the movement of responsibility for special education hearing officer system from VA Supreme Court to VDOE. Rationales: <ul style="list-style-type: none"> It would provide for improved effectiveness and greater efficiency. It ensures the timely appointment of a hearing officer and enables timelines to 	

Issue	Source	Comments	VDOE Response
	11 Prin 31 Sped Adm 16 Sped Tch 2 Sup 1 SW (67)	be met.	<p>eligibility to serve as a Special Education Hearing Officer. Having the responsibility for the system would have provided VDOE with the flexibility and the authority to provide and require needed training in special education regulations and case law without the obstacles that exist from a two-agency system.</p> <p>However, given the public comment received on the issue, and to avoid even the appearance of impropriety, the due process system, as structured for administrative purposes in the 2002 regulations, will remain in effect.</p>
	1 SSEAC (1)	Supports the transfer of the administration of the due process system from the VA Supreme Court to the VDOE with the stipulation that there be a parent advisory role in the selection/training process such as is used with DRS.	
	1 Adv 1 EO 38 Par 1 Sped Tch 1 Stu (42)	Oppose not requiring impartial due process hearings, including by removing "essential systemic safeguards."	
	1 HO (1)	Supports the appointment of hearing officers by VDOE to ensure the simultaneous appointment of a hearing officer and prevent the current lapse in time between the Office of the Executive Secretary providing the name of the hearing officer to the LEA and the notification of the Hearing Officer. This will also prevent "hearing officer shopping" with LEAs who consider an unanswered telephone call to mean the hearing officer is "not unavailable".	
Due Process -- Hearing Officers 8 VAC 20-81-210 B, F.4., F.5., G. (547 comments)	1 HO (1)	Supports the re-designation of hearing officers at all levels, Federal, State, Agency, etc. in favor of the term, "Virginia Administrative Law Judge."	<p>It is not practical or feasible to adopt the commenter's recommendation to change the title of hearing officers since the term "hearing officer" is used in state code and in federal regulations.</p> <p>Since the Supreme Court of Virginia will continue to administer the hearing officer system, they will remain responsible for the selection criteria, training, and appointment requirements. VDOE will consider options to present to the Supreme Court of Virginia on these requirements.</p> <p>The regulations relative to due process are based on the IDEA and its federal implementing regulations. Therefore, VDOE does not believe that further regulations are required.</p>
	1 Cit 1 SLP (2)	Oppose the change in terminology for Hearing Officers, and supports retaining the term and definition for "Impartial Hearing Officer."	
	2 Par 1 Sped Tch (3)	Oppose training of Hearing Officers through VDOE, rather than an outside provider.	
	1 Par (1)	Supports revising the regulations regarding hearing officer training, especially since Virginia's hearing officers are often trained by attorneys who represent school boards/systems.	
	1 Par (1)	Suggests that all training for hearing officers sponsored or provided by VDOE be open to the public.	

Issue	Source	Comments	VDOE Response
	1 Par (1)	Supports attempts to address the inadequacies in the current system through ensuring a training program for HOs.	
	6 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 27 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu (52)	Oppose deletion of language that requires that hearing officers ensure impartiality and decline appointment if an employee of VDOE or the LEA involved in the education of the child.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 2 Stu (52)	Request revising proposed F.4.b. so that hearing officers cannot be employees of any school district, not just the school district involved in educating the child.	
	1 Par (1)	Supports including a provision to ensure that hearing officers have never had previous dealings with either party involved in the due process.	
	1 Par (1)	Suggests that hearing officers be required to to file a Statement of Economic Interests substantially similar in form to that required by the VA State and Local Government Conflicts of Interest Act. This would allow parents to challenge the assignment of a hearing officer on the basis of a potential conflict of interest.	
	1 Par (1)	Suggests that more qualified attorneys need to become hearing officers and they need to demonstrate that they know the regulations before they hear a case. Equal representation of attorneys who have represented parents and school systems need to be hearing officers. Hearing officers should stay awake during entire proceeding.	

Issue	Source	Comments	VDOE Response
	3 Adv 6 AO 2 Att 14 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (54)	Support amending B. 1. a. to require that hearing officers have demonstrated knowledge of, and comply with, the Canons of Judicial Conduct for the Commonwealth of Virginia. These Cannons safeguard the integrity and ethics of judges, ensuring a fair hearing process.	
	3 Adv 6 AO 2 Att 14 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (54)	Support amending B. 3. to indicate that hearing officers may be disqualified and removed for failing to be impartial. Alternatively, support amending the regulations to include that if a hearing officer has been found to have failed to be impartial two or more times, he/she shall be removed permanently.	
	3 Adv 6 AO 2 Att 14 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (54)	Support amending B. 3. to indicate that hearing officers may be disqualified and removed for failure to comply with the Canons of Judicial Conduct for the Commonwealth of Virginia.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 23 Par 1 PT 1 SLP 2 Stu (52)	Support amending B.3.c.(1) to indicate that a hearing officer may be disqualified from a specific case if they cannot be fair and impartial.	

Issue	Source	Comments	VDOE Response
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support amending F.3.b. to provide that in an expedited hearing, a decision to disqualify a HO must be made with sufficient time for the hearing to proceed within the requisite 20 school days. This prevents the harm to the child caused from inappropriately changing his/her placement.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support amending F.4.c. to provide that persons who are employees of elementary and secondary school related agencies or organizations cannot serve as HOs. If it is important to protect LEAs against employees of disability rights organizations from serving as HOs, it is equally important to protect parents from hearing officers who are employees of school related agencies or organizations.	
	3 Adv 6 AO 2 Att 14 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (54)	Support the inclusion of proposed B. 1. a. (1)-(5), and (7).	
	3 Adv 6 AO 2 Att 14 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (54)	Support amending J.4. to require that LEA-maintained lists of hearing officers and qualifications to be shared with parents/the public upon request.	

Issue	Source	Comments	VDOE Response
	1 Sped Adm (1)	Supports the VDOE ensuring timely appointment to a special education case and rigorous training and standards	
	1 Sped Adm (1)	Supports the proposed regulations regarding hearing officers, as written.	
	1 Sped Adm (1)	Supports clarification regarding the duration of the hearing officer's authority.	
Due Process - Implementation Plan (826 comments)	12 Adv 24 AO 4 Att 600 Cit 1 Con 1 EO 2 Int 2 LAC 1 LEA Gen 1 MD 1 OT 159 Par 1 PO 2 PT 2 PTA 3 SLP 2 Sped Tch 4 Stu (822)	Oppose the proposed removal of the requirement to develop and submit an implementation plan within 45 days of the completion of a due process hearing. Rationales: <ul style="list-style-type: none"> Without them, parents will be less likely to have written guidance or timelines from the LEA regarding corrections; It is important not to delay the implementation of the hearing officer's decision; and Without them, it could require additional legal costs to ensure implementation. 	<p>Removing this requirement would not impact adversely an LEA's responsibility for implementing required actions resulting from a due process hearing and would eliminate unnecessary paperwork when no action is required. VDOE continues to be responsible for ensuring that due process hearing officers' decisions are implemented. However, VDOE will recommend to the BOE language revision wherein the implementation plans would be required to be developed within 45 days of the completion of a due process hearing in only those cases that are fully adjudicated.</p> <p>Depending on the determination, 30 days may provide insufficient time for the development of a plan for a hearing officer's determination.</p>
	1 Par (1)	Supports a 30 day timeline for the implementation of due process determinations and court orders.	
	1 LEA 2 Sped Adm (3)	Support proposed removal of the implementation plan following a due process decision or the withdrawal of a hearing request because this will reduce paperwork and work load for administrators.	
Due Process – General 8 VAC 20-81-210 C.-O., Q.-S. (2456 comments)	1 HO (1)	Suggests that hearing officers be given limited power to hold attorneys in contempt by assessing a fine and possible suspension for 30 days.	It is not feasible to adopt the commenter's recommendation since there is no statutory authority to provide contempt power to administrative hearing officers.
	1 AO (1)	Suggests that the homeless liaison be included in determining the available contact information for filing for due process.	Consistent with federal regulations, it is the responsibility of the person requesting the due process hearing to provide contact information for the child's parents.

Issue	Source	Comments	VDOE Response
	4 Adv 11 AO 2 Att 12 Cit 1 EO 1 LAC 1 MD 71 Par 1 PO 1 Psy 1 PT 1 SLP 1 Sped Tch 3 Stu (111)	Oppose allowing the local educational agency to raise issues at the hearing that were not raised in the due process request when they are not the initiating party. Believes alternatively that parents should also have the same right when they are not the initiating party.	<p>Both parents and LEAs have been afforded all procedural protections for due process which are required by IDEA and the federal regulations. The hearing officer, however, is provided discretionary authority to allow the LEA to raise issues based in the specific circumstances of the case. This allows the hearing officer to consolidate issues in order to make an appropriate decision for the sake of the student. However, VDOE agrees with the position that alternatively, parents should have the same right when they are not the initiating party. VDOE will recommend this change to the Board of Education.</p> <p>The authority of hearing officers is limited to those specified in the federal regulations. Parents have other remedies for the recovery of expert fees.</p> <p>In 2005, the U.S. Supreme Court allocated the burden of proving the effectiveness of a student's IEP to the party challenging it. <i>Schaffer v. Weast</i>, 44 IDELR 150 (U.S. 2005). The High Court's ruling requires that, in an administrative hearing challenging the effectiveness of a student's IEP, the party challenging the IEP must show it does not appropriately address the student's</p>
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support amending proposed regulation D.6.a. to strike language, "If the local educational agency is not the initiating party to the due process hearing proceeding," and to revise the remaining provision to state, "The Special Education Hearing Officer has the discretionary authority to permit the recipient of a due process hearing request to raise issues at the hearing that were not raised in the initiating party's request for due process in light of particular facts and circumstances of the case." The proposed regulation is one-sided and inconsistent with federal law. Permitting even treatment also promotes judicial economy by allowing all related claims to be heard in the same proceeding.	<p>individual needs. VDOE does not believe it is appropriate to include regulations to the contrary. However, IDEA and its federal implementing regulations do outline a procedural process for determining whether or not a child's behavior is a manifestation of the disability. Therefore, it is consistent with federal mandates to require that LEAs demonstrate that they held a manifestation determination hearing in accordance with the appropriate procedures.</p>
	1 SSEAC (1)	Suggests that the regulations stipulate that neither party (parent or LEA) referenced in 8 VAC 20-81-210 D.6. be allowed to raise issues not previously indicated in the notice of the due process hearing.	<p>The ability of a hearing officer to dismiss a hearing "with prejudice" when a parent withdraws would result in little incentive for the parties to mediate or otherwise resolve disputes. In addition, VDOE does not believe it should regulate when a hearing officer can dismiss a request for due process "with prejudice" or "without prejudice". Each case must be reviewed independently and on the facts therein. Only the hearing officer will know those facts in each particular situation.</p>
	1 EO 7 Par (8)	<p>Suggest that all due process rights and obligations should be afforded equally to both parents and school systems. Rationales:</p> <ul style="list-style-type: none"> • If school systems act "in loco parentis" then the school system and the parents should have the same rights in bringing hearing and court requests regarding educational decisions. • To do otherwise, limits parental involvement in the due process system. 	
	3 Par (3)	Support allowing parents to recover expert fees when they win.	<p>In accordance with the federal special education regulations, due process is one of three dispute resolution options that are available to a parent when a dispute arises. Parents are not required to use due process. They may also access mediation or the complaints system.</p>
	1 Cit 3 Par (4)	<p>Support placing the burden of proof on the school division in all due process hearings. Rationales:</p> <ul style="list-style-type: none"> • LEA has a statutory obligation to comply with the objective of the Act and the exclusive means of educational knowledge and information. • Schools have the obligation to provide FAPE in exchange for the federal funding they receive. • It leads to efficient use of judicial time and resources creating desirable 	<p>Timelines regarding the appointment of hearing officers were changed to ensure overall fairness in the process.</p> <p>VDOE agrees that reinserting the phrase "fair and impartial hearing" in the proposed provision 8 VAC 20-81-210 L. 9. will</p>

Issue	Source	Comments	VDOE Response
		incentives for school districts to articulate and communicate their educational practices.	provide clarity, and will recommend this to the BOE.
	1 Att (1)	Opposes (M)(19). The provision that places the burden of proof on school divisions when a manifestation is challenged by parents exceeds federal requirements.	The federal regulations permit a party to appeal a due process hearing officer's decision to federal court within 90 days of the date of the hearing officer's decision. To provide consistency in process, the same timeline was proposed for the state appeal process.
	1 Sped Adm (1)	Supports giving a hearing officer the latitude to dismiss a due process case "with prejudice" if a parent withdraws a due process case within 5 business days of the scheduled hearing. To do otherwise permits the parent access to the LEA's witness lists and documents and forces the LEA to invest considerable resources to preparing a defense, potentially harassing the LEA, or prejudicing the LEA if the parent re-files (especially if the parent withdrew their case without providing the LEA with document/witness lists, yet received the LEA's materials).	The federal regulations require that VDOE ensure that all noncompliances are corrected within one calendar year, including those identified via a due process hearing. The requirement for a new resolution session following the amendment of a due process request was proposed in order to comply with federal regulations, thus ensuring that both parties have the opportunity to resolve issues after the amendment of the request.
	1 Par (1)	Opposes requiring parents to use the due process system when they disagree with the school division.	The proposed provision, which requires that hearing officer decisions be held in abeyance during appeals, is in line with customary judicial practice, and it ensures that a student's services are not unnecessarily disrupted. In accordance with federal regulations, the only time the hearing officer decision may not be held in abeyance is when the decision agrees with the parent's choice of placement.
	3 Adv 12 AO 3 Att 15 Cit 1 EO 1 LAC 1 MD 37 Par 1 PO 1 PT 1 SLP 1 Sped Tch 3 Stu (80)	Oppose proposed deletion of language that requires that the LEA ensure that a hearing officer is appointed within 5 business days of a request for a non-expedited hearing and three business days of a request for an expedited hearing.	VDOE agrees that 8 VAC 20-81-210 E. should be amended to insert an "or" between provisions E. 1. a. and E. 1. b., and will recommend this change to the BOE. The proposed provisions regarding the sufficiency of due process hearing requests, and the amendment of those requests, are in line with IDEA and its federal implementing regulations.
	6 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 28 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu (53)	Oppose deletion of "fair and impartial hearing" in the proposed L.9. that addresses responsibilities of the LEA and requires that upon request the LEA provide information to the hearing officer to assist in the administration of a "fair and impartial" hearing.	8 VAC 20-81-210 D. 1. a., as proposed, requires that if an LEA initiates a due process hearing, they must notify VDOE and the parent in writing. To ensure an efficient and consistent hearing process, and to avoid duplication of efforts, VDOE will recommend to the BOE that the regulations include a requirement that when an IDEA hearing also indicates a 504 dispute, that both be allowed to be included within the IDEA due process notice. The proposed provision allowing an LEA to initiate a due process hearing to resolve disputes regarding parental consent for the initial provision of services complies with current federal special education regulations. If USDOE amends the current federal regulations, Virginia's state special education regulations will be amended accordingly.

Issue	Source	Comments	VDOE Response
	3 Adv 11 AO 4 Att 14 Cit 1 EO 1 LAC 1 MD 39 Par 1 PO 1 PT 1 SLP 1 Sped Tch 3 Stu (81)	<p>Oppose the deletion of the language from the current regulations at 8 VAC 20-80-76 O.1. that permits hearing decisions to be appealed within 1 year of the date of issuance rather than 90 days. Federal regulations allow states to set their own timeline. Rationales:</p> <ul style="list-style-type: none"> • The power to make exceptions to Virginia's statute of limitations is reserved for the General Assembly. • Parents unfamiliar with their rights may need adequate time to bring a case, after carefully weighing the decision and information. • Too short of a timeline may result in more cases being appealed as parties rush to protect their rights. 	<p>VDOE agrees that the party requesting a due process hearing should provide a copy of the written request for due process to the other party contemporaneously with the delivery to VDOE, and will recommend this change to the Board.</p> <p>The provision permitting VDOE to require Hearing Officers to reissue decisions relative to correct use of citations, readability, and other errors, is in line with VDOE general supervisory responsibility. It is noted that neither the federal nor the state special education regulations would permit VDOE to make substantive changes. Those are issues for a court of competent jurisdiction.</p> <p>As previously noted, based on the public comments received, the Supreme Court of Virginia will continue to be responsible for the management of the due process system, including the appointment of hearing officers.</p>
	3 Adv 12 AO 4 Att 15 Cit 1 EO 1 LAC 1 MD 38 Par 1 PO 1 PT 1 SLP 1 Sped Tch 2 Stu (81)	<p>Oppose the proposal that allows LEAs up to a year to correct noncompliance findings. Suggests that this timeline be replaced with 45 calendar days. Rationales:</p> <ul style="list-style-type: none"> • This will prevent a denial of a timely implementation. • A delay in implementation would likely be the basis for additional compensatory education. 	<p>Although VDOE will continue to post its redacted due process decisions to its web site, additional regulations regarding this matter are not required.</p> <p>The hearing officer giving deference to witnesses for the school division is driven by case law in the 4th circuit.</p> <p>It is inappropriate for these regulations to establish mandates for the Supreme Court of Virginia.</p> <p>VDOE agrees with the comments to require that copies of the due process decisions be provided to both the parties and their attorneys. VDOE will recommend this language.</p>
	3 Adv 11 AO 3 Att 15 Cit 1 EO 1 LAC 1 MD 37 Par 1 PO 1 PT 1 SLP 1 Sped Tch 2 Stu (78)	<p>Oppose the proposal that requires a new resolution session with an amended due process hearing since this would delay appropriate action for the child.</p>	<p>The requirement that the hearing officer "may" return the child to the placement from which the child was removed, etc..., mirrors the federal regulation.</p> <p>The word, "substantially," is included under 8 VAC 20-81-160 and in this section, referring to when LEAs request due process if the LEA believes the child's behavior is substantially likely to result in injury to self or others.</p> <p>The regulations relative to due process are based on the IDEA and its federal implementing regulations. Therefore, VDOE does not believe that further clarification regarding this subsection is required.</p>
	1 AO 1 Att 1 Par	<p>Oppose requiring that hearing officer decisions be held in abeyance if the decision is appealed. Once a hearing officer has made a decision, that decision should be implemented without delay and not deny a student services while a</p>	

Issue	Source	Comments	VDOE Response
	(3)	lengthy appeal process is underway.	
	1 Att 1 VDOE (2)	Suggest that in 20-81-210 E., the requirement for amending a due process hearing indicate either a. or b. be met – not both.	
	3 Adv 11 AO 3 Att 13 Cit 1 EO 1 LAC 1 MD 37 Par 1 PO 1 PT 1 SLP 1 Sped Tch 2 Stu (76)	Suggest that parties only be required to go through an amendment procedure when seeking to significantly change the subject matter of the complaint, thus allowing minor insufficiencies such as leaving out the student' address or name of his/her school without going through the amendment process, particularly if the LEA's files contain this information. Parents are not knowledgeable about the hearing process, but requiring a new complaint to be filed, delays the child's ability to obtain relief.	
	3 Adv 11 AO 3 Att 14 Cit 1 EO 1 LAC 1 MD 37 Par 1 PO 1 PT 1 SLP 1 Sped Tch 2 Stu (77)	Suggest that the regulations include language that would require hearing officers to allow due process complaint notices to be amended unless doing so would prejudice the other party. Alternatively, leave to amend should be "freely given when justice so requires." Parents do not understand the hearing procedures in detail and should be allowed to amend complaints when necessary rather than having to start the entire process from the beginning with a new complaint.	
	5 AO 1 Att 1 Cit 1 EO 1 LAC 14 Par 1 PO 1 SLP 1 Sped Tch 1 Stu (27)	Suggest that the regulations require the LEA to send the parent and VDOE a copy of the request for a due process hearing initiated by the LEA. By adding this language, it will ensure that the parents will receive a copy of the request for due process being filed by the LEA.	

Issue	Source	Comments	VDOE Response
	1 Att 2 Par (3)	Support amending 210 D. 1., to state, "1. A request for a hearing shall be made in writing to the Virginia Department of Education. A copy of that request shall be contemporaneously delivered by the requesting party to the other party."	
	1 Att 2 Par (3)	Support Deleting 210 D. 1. a. in its entirety, regarding the LEA "advising" the parent in writing of a request for due process.	
	1 VDOE (1)	Suggest that the regulations include a requirement that when an IDEA hearing also indicates a 504 dispute, that both be included within the IDEA due process notice to promote efficiency in the hearing process and avoid confusion about the status of the 504 dispute. This also would prevent parallel proceedings from occurring at the same time.	
	6 AO 2 Att 9 Cit 28 Par 1 EO 1 LAC 1 MD 1 PO 1PT 1 SLP 1 Sped Tch 1 Stu (53)	Suggest that the provision C. 2., which allows an LEA to initiate a due process hearing to resolve parental withholding or refusing consent for the initial provision of special education to a child means that an LEA can initiate a hearing at other times. Given that USDOE has indicated intent to provide guidance on this topic, suggests that this is premature.	
	2 Att 1 Cit 5 Par (8)	Oppose B.4., which permits VDOE to require that Hearing Officer's decisions be rewritten/reissued, including due to concerns about "readability" or "conflict in the data." Rationales: • VDOE should not be permitted to make edits unless the parents' attorney may also edit.	
	3 Adv 6 AO 3 Att 14 Cit 1 MD 27 Par 1 PT 1 SLP 2 Stu (58)	Support deleting from 210 B. "In administering the special education due process hearing system, the Virginia Department of Education establishes procedures for:" and replacing it with "B. If requested by the Supreme Court of Virginia, and in conformance with the provisions of the Code of Virginia, §§ 2.2-4020 and 2.2-4024 of the Administrative Process Act, the Virginia Department of Education may assist the Supreme Court with the establishment of procedures for:"	

Issue	Source	Comments	VDOE Response
	3 Adv 10 AO 3 Att 14 Cit 1 EO 1 LAC 1 MD 37 Par 1 PO 1 PT 1 SLP 1 Sped Tch 2 Stu (76)	Oppose deletion of language that indicates that hearing officers ensure that the rights of all parties are protected and that the laws and regulations are followed in the conduct of the hearing.	
	2 AO 1 Att 1 Cit 1 EO 9 Par 1 PO 1 SLP (16)	Oppose the proposed change to 10 days for a hearing officer to provide a written decision for an expedited due process decision. Suggests that the current 5 day timeline be used.	
	6 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 28 Par 1 PT 1 PO 1 SLP 1 Sped Tch 1 Stu (53)	Oppose the proposed deletion of the following from written findings: whether the requirements of the notice to the parent(s) were satisfied, whether the child has a disability, whether the child needs special education and related services, and whether the LEA is providing a free and appropriate public education.	
	3 Adv 11 AO 3 Att 15 Cit 1 EO 1 LAC 1 MD 38 Par 1 PO 1 PT 1 SLP	Request amending N.9. to prohibit hearing officers from granting extensions of time for school districts to respond to parents' due process complaint notices, challenge parents' due process complaints as insufficient, or unilateral school district requests to extend the 30-day resolution session period. IDEA is specific about these timelines and they cannot be changed by VDOE or the Hearing Officer.	

Issue	Source	Comments	VDOE Response
	1 Sped Tch 1 Stu (78)		
	1 Cit (1)	Recommends panel of 3 for a due process hearing: 1 parent, 1 mutually agreed on member, 1 VDOE selected member.	
	5 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 24 Par 1 PO 1 PT 1 SLP (46)	Oppose deletion of language that requires a hearing officer to ensure that the atmosphere is conducive to "impartiality."	
	1 Sped Adm (1)	Supports not requiring briefs as a condition of a hearing officer rendering a decision,	
	1 Att (1)	Tighten up N.13. An expedited due process hearing is not available for a change in placement resulting from a violation of a code of student conduct. It is the result of a change in placement due to discipline as a result of a violation of the code of student conduct.	
	1 Par 1 Sped Adm (2)	Support specification of the procedures for requesting a due process hearing.	
	1 Par (1)	Opposes allowing VDOE to remove itself from being a party to a due process hearing.	
	3 Adv 2 Att 6 AO 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (54)	Support striking proposed regulation H.6., which provides that a Part C program is not stay put for children transitioning from Part C to Part B. Although H.6. is consistent with 34 C.F.R. §300.518(c), that federal regulation is not required to implement IDEA 2004, and IDEA 2004 only permits the adoption of regulations that are necessary to ensure compliance with IDEA 2004's specific requirements.	

Issue	Source	Comments	VDOE Response
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Oppose the deletion of current requirement 8 VAC 20-80-76 G. 6. that requires VDOE to notify the Virginia Supreme Court "of either the hearing officer's written decision or other conclusion of the case."	
	3 Adv 2 Att 6 AO 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support amending L. 2. to clarify that parents need not use the due process complaint form provided by the LEA.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support proposed M. 17 d. providing that hearing officers may order LEAs to comply with the procedural requirements under 34 C.F.R. § 300.500 through 300.536.	
	3 Adv 6 AO 2 Att 14 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (55)	Support revision of proposed regulation D.5 to clarify that the hearing officer cannot require pleading with specificity or require more information than the elements set forth in the statute.	
	3 Adv 6 AO 2 Att	Support amending J. to require that Virginia continue to provide hearing decisions and appeal information through regular updates to its webpage. This informs parents.	

Issue	Source	Comments	VDOE Response
	14 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (55)		
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support amending J.5. to provide that the names of school districts and school personnel shall not be redacted when due process decisions are posted to VDOE's web site. Identifying them is important for accountability. Parents have the right to have personally identifiable information redacted under FERPA, but LEA and personnel have no similar right. These names are not redacted in federal court because they have no valid privacy interest.	
	3 Adv 6 AO 2 Att 14 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (55)	Support amending proposed regulation D.1. to provide explicitly that hearing notices may be filed by parents or the LEA. Further supports amending D.1.(b) to provide that parents' due process requests received only by VDOE, will be forwarded to the LEA, and clarifying that if the LEA fails to send a copy to parents, its due process request will be rejected. D.1. appears as if only LEAs may file hearing notices, and as if the provisions in D. only apply to the LEA.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Recommend change A. to indicate that parties can file due process complaints "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or provision of a free appropriate public education to such child" and 1415(f), which requires due process hearings for disciplinary matters under 1415(k).	
	1 Cit (1)	Supports proposed F.3 which permits school districts to ask the hearing officer for a 45-day extension of the interim alternative educational setting, "when school personnel believe that the child's return to the regular placement would result in injury to the student or others".	
	1 Cit	Recommends correction to F.1 to add the word "substantially" thus permitting	

Issue	Source	Comments	VDOE Response
	(1)	school districts to seek due process for 45-day removals only when the LEA believes the child's behavior is substantially likely to result in injury to self or others.	
	1 Cit (1)	Requests new regulations keep the standards in current (C)(4)(b) that a hearing officer is to consider ordering a change in placement to an interim alternative setting for not more than 45 school days because current placement is substantially likely to result in injury to student and others, including the appropriateness of the student's current placement.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Recommend revision of proposed C.1 to bring it into conformity with VA's statute of limitation for civil actions, VA code § 8.01-229, providing that the statute of limitations is tolled when the person is incapacitated, and when the school district uses "any other direct or indirect means to obstruct the filing of an action."	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support a revision to proposed C.1 to state that if parents file a due process complaint notice, it will toll the timeline in the event that further amendments are required. This is the standard applied in court. Otherwise, unrepresented parents may be denied the opportunity to litigate valid claims due to an inartfully drafted complaint, even when it was timely filed.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support a revision to D.6 to provide that issues not included in the due process complaint may be raised at a hearing if "the other party agrees otherwise."	
	1 Par (1)	Recommends that if a parent prevails at a due process hearing, the hearing officer should have authority to grant attorney's/advocate's fees.	

Issue	Source	Comments	VDOE Response
	1 Att (1)	Suggests that jurisdiction for attorneys' fees resides only with a federal court.	
	1 Att (1)	Notes that the reference to subsection G. in 8 VAC 20-81-210 R. 3. is incorrect.	
	1 Par (1)	Opposes hearing officer giving deference to witnesses for the LEA.	
	1 Att 2 Par (3)	Support amending 210 F. 1. a. to state, "The Virginia Department of Education shall contact the Supreme Court of Virginia for the appointment of the Special Education Hearing Officer."	
	1 Att 2 Par (3)	Support amending 210 F. 1. as follows: "1. Within one business days of receipt of the request for a hearing," requiring the assignment of a HO within one day of the receipt of the request for a hearing regardless of whether or not the hearing is expedited or nonexpedited."	
	1 Att 2 Par (3)	Support amending 210 F. 1. b. to state, "The Supreme Court of Virginia shall contact the Special Education Hearing Officer to confirm availability, and upon acceptance, shall, in writing, within three business days of receipt of the request for a hearing, jointly notify the parents, the local educational agency, all attorneys of record, and the Virginia Department of Education of the appointment."	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support amending F.1. to require that both the LEA and the parents be informed of the HO's appointment by the State, or alternatively, to require the LEA to immediately notify the parents upon the HO's appointment. The proposed regulation would permit the LEA to delay informing the parent of who the HO is even once known to them.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support amending M.14. to retain the language of current 8 VAC 20-80-76 J.16., which requires that copies of the due process decision be provided to both the parties and their attorneys, or at least to the parent, as well as the parent's attorney. It is Virginia's responsibility to ensure that parents receive the decision. If the attorney does not provide the parent with the decision, the parent should not suffer the consequences.	

Issue	Source	Comments	VDOE Response
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support amending N.13.c.(1) to state that the hearing officer is "required to" (opposed to "may") return the child to the placement from which he/she was removed if it is determined that the removal violated special education disciplinary procedures or was a manifestation of the disability. IDEA does not permit the HO the option, when the conduct is a manifestation, to keep the child in the interim placement.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support amending O.2.e. to require that if the LEA fails to convene a resolution hearing as required, and parents seek intervention by a hearing officer to start the 45-day due process timeline, the hearing officer must rule within three days of receipt of parents' motion. 34 C.F.R. § 300.510(b)(5) permits parents to seek the intervention of a hearing officer to start the due process timeline; however, permitting this to be delayed by a delayed briefing and motions schedule would prevent parents from achieving resolution.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support amending proposed provision C.1. to permit parents to file actions seeking compensatory education for more that the last two years, when the conduct is ongoing. IDEA 2004's legislative history makes clear that parents can seek compensatory education for ongoing denials of FAPE to their children that have extended for longer than two years. Claims for unilateral placements when the child has not attended public school for more than two years would be time-barred.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support clarifying that if the portion of N.5. is retained authorizing hearing officers to require that parties and their representatives "comply with the Special Education Hearing Officer's rules," then the regulations must also require that such rules be published on the VDOE's webpage, and comply with IDEA, Virginia's special education requirements, and state and federal civil procedure and evidentiary rules. To the extent they exceed Virginia special education regulations, they must be subject to notice and comment. If hearing officers are permitted to adopt individual rules, these must be published on the VDOE's webpage or automatically provided to parties upon filing a case and being assigned a judge, just as with a federal court judge's standing orders.	
	1 Att (1)	Supports combining 210 R. 3. and 4. into one provision that states, "The Special Education Hearing Officer's decision shall be implemented as soon as reasonably possible, but in no case longer than 30 calendar days from the date the decision was issued. If not implemented within 30 days, the VDOE is immediately	

Issue	Source	Comments	VDOE Response
		responsible for implementing the Hearing Officer's decision." This timeline would align with the required timeframe for implementing an IEP, and if the LEA decides to appeal, they can request an injunction to postpone implementation.	
	1 Att 2 Par (3)	Support deleting 210 F. 1. c. in its entirety.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support implementation of M.19, specifying the hearing officer's obligations when a manifestation determination is at issue.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support implementation of proposed regulation M.15, requiring hearing decisions to include the findings of fact determinative of the case, the legal principles on which the decision is based, and an explanation for the basis of decision on each issue, and permitting an explanation of relief granted.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support proposed provision C.1., which ensures that there is a two year timeline for filing due process requests, and provides two exceptions.	
	1 Par (1)	Supports requiring due process hearings to be held on neutral territory.	
	3 Adv 6 AO	Support retaining proposed regulation I. in full.	

Issue	Source	Comments	VDOE Response
	2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)		
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support striking the proposed language in N. 10. that permits the dismissal of due process cases if "either party" refuses to comply in good faith with a hearing officer's order. Alternatively, supports providing that hearing officers have authority to dismiss cases when there is compelling evidence of bad faith by the party that filed for due process, and authority to enter default judgments and strike affirmative defenses when there is compelling evidence of bad faith by the recipient of due process (defendant). IDEA 2004 does not permit a HO to dismiss a parent's case because a defendant school district wrongfully ignores a HO's order; however, the proposed language would allow that. Because all of these remedies (dismissal, default judgments, and striking of defenses) are so severe, there must be compelling evidence of actual bad faith before they may be ordered.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support the inclusion of H.1. to H. 5. as consistent with federal and state law.	
	2 Par (2)	Support VDOE providing parents the same access to the electronic IDELR library during due process hearings as is provided to hearing officers and LEAs.	
	1 Att (1)	Opposes the language of R.4. to the extent that it appears as if VDOE assumes no responsibility for ensuring that due process hearing decisions are enforced. (The provision notes a complaint may be filed with VDOE for investigation if a decision is not implemented.)	
	1 Par (1)	Opposes permitting LEAs to use other children's educational records, state complaints, and/or due process hearing decisions as part of its due process defense.	

Issue	Source	Comments	VDOE Response
	1 Par (1)	Opposes proposed change which prevents a foster parent or social worker from requesting due process on a child's behalf.	
	3 Cit 2 Par 1 Sped Tch (6)	Generally oppose the changes in the due process section, and supports maintaining existing provisions.	
	1 Par (1)	Supports requiring that the parent and the LEA be informed of the identity of the hearing officer appointed for their hearing.	
Due Process – Resolution Sessions 8 VAC 20-81-210 O. 1. - O.5., and P. 2. (526 comments)	1 AO (1)	Suggests that the proposed regulations do not include enough safeguards to ensure that parents are on an equal and respectful playing field during these meetings.	VDOE agrees that the regulations should clarify in accordance with 34 C.F.R. § 300.510, that efforts to arrange a resolution meeting must be documented in accordance with 8 VAC 20-81-110 E.4., and will recommend this change to the Board. The remaining proposed provisions are consistent with the federal regulations regarding resolution sessions. Therefore, VDOE does not believe that additional clarification is necessary, including regarding the requirement to use state or federal courts to enforce agreements reached during resolution sessions. Specifically, while States have the option of allowing resolution agreements and mediation agreements to be enforced through other mechanisms, it is not feasible for VDOE to assume this responsibility due to the specific nature of contract law that is presumed. VDOE does support the scheduling of resolution sessions at a mutually agreed upon time and place, to the extent that the timelines for convening such sessions are met.
	3 Adv 13 AO 2 Att 23 Cit 1 LAC 1 MD 50 Par 1 PO 2 PT 2 SLP 3 Stu (101)	Oppose proposed language that indicates that a resolution session is not required if the LEA requests the due process hearing. Support amending O.9. to require that resolution sessions be mandatory regardless of who requests due process, including 15 days to convene a meeting and 30 days to reach a resolution.	
	3 Adv 4 AO 3 Att 1 Cit 1 EO 1 LAC 31 Par 1 Psy 1 Sped Tch 2 Stu (48)	Support the requirement that a resolution session be held, unless both parties agree otherwise, regardless of whether the due process is filed by the parent or the LEA.	
	1 AO 1 Att 1 Par (3)	Suggest adding language requiring resolution sessions to be confidential, helping to ensure open and honest discussion and a greater likelihood that settlement could occur.	

Issue	Source	Comments	VDOE Response
	1 Att (1)	Opposes the imbalance between the rights of the parent and the rights of the LEA in resolution sessions.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support amending O.1.a. to require that LEAs make all reasonable efforts to schedule the resolution session at a mutually-agreed upon time and place, and contact the parent within five days of receiving the due process hearing request to schedule the meeting. LEAs could dismiss cases by scheduling sessions when parents cannot attend. If the resolution meetings are to decrease litigation, parents must be able to attend the meeting.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Request revision of O. 2. so that if parents are unable to attend a resolution session, the school district should use alternative means to ensure participation, such as those described in Sec. 300.328, including conference calls or videoconferencing, subject to the parent's agreement.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 1 Stu (52)	Support amending O.1.a. to specifically recognize the rights of parents to bring advocates and others with special knowledge of the child to the resolution meeting.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support amending O.1.a. to prevent LEAs from abusing/misusing the resolution session, and from preventing parents from seeking due process when they have attended a resolution session. The resolution session should not be an opportunity for the LEA to impose additional obligations on parents or to intimidate or interrogate parents, used as a one way discovery session, or grounds for dismissing the hearing based on the parent's denial of an LEA offer.	

Issue	Source	Comments	VDOE Response
	3 Adv 6 AO 2 Att 14 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (54)	Support amending O.1.d. to require the LEA to consult parents to select relevant team members within five days of the receipt of the due process hearing request. To ensure a resolution is achieved, IEP members whom the parent believes need to attend must be included. The LEA must consult parents sufficiently in advance of the meeting to ensure that parents have meaningful input and that arrangements can be made to ensure that the team members attend.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Request adding a new section to the regulations allowing a signed resolution agreement to be enforced through the Complaint Procedures under 8 VAC 20-80-78, as well as in state or federal court. The complaint process is simpler and less expensive than seeking enforcement via the courts.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support amending O.2.d., in accordance with 34 C.F.R. § 300.510, to provide that efforts to arrange a resolution meeting must be documented in accordance with 34 C.F.R.300.322(d) or 8 VAC 20-81 E.4. before the school district may request dismissal.	
	1 LEA (1)	Supports the proposed regulation that requires school divisions to convene a resolution meeting within 15 days when a parent files a due process hearing request.	
Due Process - Lay Advocates 8 VAC 20-81-210 (2 comments)	2 Sped Adm (2)	Oppose non-attorney representation of parties. Supports access to attorney representation of parties, at their expense, in a due process hearing due to the complexity of cases that require a hearing.	It is not feasible to adopt the commenter's recommendation since the <i>Code of Virginia</i> allows for non-attorney representation at a hearing.
Surrogate Parents 8 VAC 20-81-220	1 Gen Ed (1)	Suggests that the regulations specify what assistance (courts, agencies) the LEA may have in finding and assigning surrogate parents.	It is anticipated that these regulations will require many fewer instances for assigning surrogate parents and do not specify the procedures for recruiting surrogate parents at the local level.

Issue	Source	Comments	VDOE Response
(410 comments)	1 Sped Adm (1)	Supports these regulations which are in line with the federal regulations.	Should an LEA have difficulty, as part of VDOE's ongoing responsibility to provide technical assistance, the VDOE will provide ideas and referrals to other agencies for assistance.
	1 Sped Adm (1)	Supports the proposed removal of the requirement that a surrogate parent reside in the same general geographic area as the child since it may make it easier for divisions to find individuals willing to serve as surrogate parents.	The proposed language at 8 VAC 20-81-220 B. 2. and D.3. is consistent with the federal regulations. VDOE, therefore, does not believe further clarification is necessary.
	3 Adv 11 AO 3 Att 14 Cit 1 EO 1 LAC 1 MD 38 Par 1 PO 1 PT 1 SLP 1 Sped Tch 2 Stu (78)	Suggest that the proposed regulation which allows for termination of a surrogate parent when a child is found no longer eligible for special education also require the consent for termination by the surrogate parent.	The proposal for not requiring a surrogate to reside in the same geographic area was based on the need to recruit those willing and capable of serving in this capacity which may necessitate going beyond local boundaries. In response to the public comments regarding parent consent and the termination of special education and related services, VDOE will recommend to the BOE to retain the current requirement regarding the surrogate parents' consent in this instance. The definition of parent in the proposed regulations takes into consideration both federal and state regulations.
	1 AO 1 Par (2)	Suggest changing the situations that would require a surrogate parent, thus requiring LEAs to appoint surrogates only when the suggested provisions of B.1. do not apply.	VDOE will recommend to the BOE that the suggested language related to establishing procedures in accordance with these regulations will be inserted to ensure clarity.
	1 AO 1 Par (2)	Suggest changing language in B.1. to reflect changes to the definition of parent in the federal regulations, thus minimizing the need for the use of surrogate parents. This change would also clarify when surrogate parents are needed.	Many surrogate parents are already parents of students with disabilities or have been involved in services for students with disabilities. VDOE heard that the training was both a barrier to recruitment as well as redundant for those serving. Consequently, this was removed to facilitate timely recruitment.
	3 Adv 7 AO 3 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (56)	Suggest added language that would specify that LEAs must establish procedures "in accordance with these regulations" for determining when a child needs a surrogate parent.	Language is included at B.1.b. to ensure that other requirements related to who may act as a parent in VA is included. Consequently, the suggested language at B.1.b. is not appropriate. Language related to children in social services and permanent foster case is included since that falls under specific requirements of the Code of Virginia. As such, it cannot be excluded.
	6 AO 2 Att 9 Cit 1 EO	Oppose the proposed deletion of current requirements for surrogate parents to complete an LEA approved training session with annual training as necessary to ensure that surrogate parents have the necessary knowledge of services and legal requirements necessary to represent the student.	VDOE agrees with the comments related to the need for clarity regarding the appointment of a surrogate parent for children who are wards of the state or homeless and will recommend clarifying language to the BOE.

Issue	Source	Comments	VDOE Response
	1 LAC 1 MD 28 Par 1 PO 1 PT 1 SLP 1 Stu 1 Sped Tch (53)		
	1 AO (1)	Recommends revising 8 VAC 20-81-220 B. 2. to state, "The local educational agency shall appoint a surrogate parent for a child, aged two to 21, inclusive, including a child who is a ward of the state or an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 USC § 1143a(6)) and the Code of Virginia § 22.1-3, who is suspected of having or determined to have a disability when: a. No parent, as defined in 8 VAC 20-81-10, can be identified; or The local educational agency, after reasonable efforts, cannot discover the whereabouts of a parent." This change will ensure that a surrogate is not appointed for a homeless youth or ward of the state if someone meeting the definition of parent is available.	
	1 AO (1)	Supports language in B.5 which provides that the local educational agency shall establish procedures for determining whether a child needs a surrogate parent.	
	1 AO (1)	Supports the narrower wording in D.3. allowing the use of appropriate staff of an emergency shelter, transition shelter, independent living program, or street outreach program to be a temporary surrogate parent even though they may be an employee of an agency involved in the education and care of the child. The broader language of the federal regulations would allow state or local educational agency staff to serve as temporary surrogates which would not be appropriate.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Suggest amending B.1.b. by replacing the entire proposed provision with the following language, " Any person who can serve as 'parent,' as defined by this chapter in 8 VAC 20-80-10, other than a surrogate parent, is either acting as a parent, or is available and willing to act as parent for the purposes of this chapter."	
	3 Adv 6 AO 2 Att 13 Cit 1 MD	Suggest deleting B.1.c. which relates to those children in the custody of social services.	

Issue	Source	Comments	VDOE Response
	24 Par 1 PT 1 SLP 2 Stu (53)		
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Suggest amending B.1.a. to insert “adoptive,” thus “a. The biological, adoptive parent(s) or guardians are allowing relatives or private individuals to act as a parent.”	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (54)	Suggest adding the following language to the end of B.2.c. “The child is a ward of the state and the provisions of 8 VAC 20-81-220(B)(1) do not apply.”	
Annual Plan 8 VAC 20-81-230 B (115 comments)	1 LAC 3 Par 1 SLP (5)	Support requiring LEAs to provide an opportunity for notice and comment on local policies and procedures so parents can express their concerns, if the LEA will have more power/autonomy.	Nothing in the proposed regulations would prohibit a school division from providing notice and soliciting comments on local policies and procedures. Local advisory committees are required to participate in the review of policies and procedures for the provision of special education and related services. Notice of their meetings to the public is required. The public is invited to make public comment to members of local advisory committees. LEAs are responsible for developing local policies and procedures in compliance with state regulations. As with other local regulations, they are not subject to approval by VDOE.
	6 Adv 12 AO 4 Att 26 Cit 2 MD 52 Par 2 PT 2 SLP 4 Stu (110)	Support retaining current requirement which requires LEAs to prepare and submit to VDOE policies and procedures as well as any changes to those after submitting them to their local school boards for approval. Without such oversight, VDOE will be less aware if LEAs incorrectly craft procedural changes.	
Funding - General (except Early Intervening)	1 Sped Adm (1)	Suggests that at least two years notice be provided to LEAs for any changes to regional special education tuition structure and reimbursement. The use of the	The proposed revision related to regional special education programs provides the Superintendent of Public Instruction or

Issue	Source	Comments	VDOE Response
Services) 8 VAC 20-81-230 C. 8 VAC 20-81-240 to 8 VAC 20-81-290 (161 comments)		phrase, "subject to availability" and no reference to the use of the composite index is a concern. Local budgets would need to accommodate changes and LEAs would need to be able to anticipate possible cost increases as well as adjustments resulting from the deletion in the proposed regulations of appeal rights related to the rate for regional special education programs.	designee greater flexibility in the structuring of programs and funding to meet the needs for students in regional programs. Funding allocations are not specified in these regulations and are determined by state Standards of Quality funding formulae and federal funding formulae.
	1 Par (1)	Opposes budget cuts in preschool special education programs since early intervention is necessary for success.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support implementing 20-81-250, State funds for local school divisions, as proposed.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support implementing 20-81-260, Federal funds, as proposed.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support 20-81-280 C. and G. as proposed which allows for the state to withhold funds if it finds that an LEA fails to implement programs of FAPE and for the LEA to provide public notice of such action.	
Local Advisory Committees (LAC) 8 VAC 20-81-230 D.	3 LEA Gen 2 PO 1 PRC 12 Prin 36 Sped Adm	Support a balanced representation of parents of children with varied disabilities.	Due to the long-standing requirement for local advisory committees and a history of their contributions, the Board of Education maintained the requirement for local advisory committees in its proposed regulations. To comply with federal mandates and to address comments raised during NOIRA public

Issue	Source	Comments	VDOE Response
(2,859 comments)	16 Sped Tch 1 Sup 1 SW (72)		<p>comments, however, the committee composition was modified to:</p> <ul style="list-style-type: none"> require membership diversity to reflect local gender and ethnicity representation. Such representation is designed to ensure that cultural and gender-specific concerns are addressed by the committees; require that a majority of the committee be parents of students with disabilities <u>or</u> individuals with disabilities. The current regulations require that the committee include parents of students with disabilities <u>and</u> individuals with disabilities. The requirement for parents to be the majority ensures that family concerns are the focus of the committee. allow LEA personnel to serve as members of the committee. A number of comments were received during NOIRA indicating that parents of students with disabilities who were also school employees were prohibited from participating. Since some LEAs have difficulty recruiting active members, the prohibition was removed to give LEAs more flexibility in recruiting parents of students with disabilities. <p>VDOE does not believe that further specificity regarding these requirements is warranted. However, VDOE will recommend to the BOE removal of the requirement regarding membership diversity reflecting local gender and ethnicity representation.</p> <p>Additionally, VDOE will recommend language wherein the LAC composition will include a teacher.</p>
	16 Adv 27 AO 6 Att 2 Brd 632 Cit 1 EO 2 Int 3 LAC 1 LEA Gen 1 MD 248 Par 1 OT 1 Psy 2 PT 4 PTA 3 SLP 3 Sped Tch 7 Stu (960)	Oppose allowing LEA personnel to act as voting members on LACs due to a conflict of interest.	
	1 LAC 1 LEA 4 LEA Gen 1 Par 2 PO 1 PRC 12 Prin 33 Sped Adm 20 Sped Tch 2 Sup 1 SW (78)	Support membership and voting rights for school personnel. 1 Sup indicated the restriction could be discriminatory.	
	1 AO 1 Gen ed 2 LEA Gen 1 Par 1 PO 1 SLP 3 Sped Tch (10)	Suggest that at least one special education classroom teacher be a voting member of the LAC.	
	1 Sped Adm	Supports the changes proposed to allow LEA representatives on the committee	

Issue	Source	Comments	VDOE Response
	(1)	as well as the requirement that the majority be parents.	
	9 Adv 12 AO 1 Att 602 Cit 2 Int 1 LAC 1 LEA Gen 1 MD 1 OT 132 Par 1 PO 2 PT 3 PTA 3 SLP 2 Sped Adm 2 Sped Tch 1 SSEAC 2 Stu 2 Sup (780)	Oppose requiring LACs to be representative of gender due to the high number of women in advocacy roles and who take responsibility for their children's education, and because women make up the majority of educational professionals and serve as volunteers of PTAs.	
	9 Adv 14 AO 1 Att 600 Cit 2 Int 1 LAC 1 LEA Gen 1 MD 1 OT 138 Par 1 PO 2 PT 3 PTA 3 SLP 2 Sped Adm 2 Sped Tch 1 SSEAC 2 Stu 2 Sup (786)	Oppose ethnic representation on LACs due to an inability of a local LAC to be proportionally representative of every ethnic group in a locality and would result in a very large committee.	
	6 Adv 10 AO 4 Att 33 Cit 1 EO	Support the continued requirement of Local Advisory Committees.	

Issue	Source	Comments	VDOE Response
	1 LAC 1 MD 83 Par 1 Psy 1 PT 1 Sped Tch 4 Stu (146)		
	1 Par (1)	Suggests that the language be changed from “shall” to “the best of the LEA’s ability” regarding committee composition or leave the regulations as is.	
	1 EO (1)	Suggests that the regulations indicate that LACs not be allowed to meet in closed session.	
	1 Sped Adm (1)	Suggests clarifications and modifications of roles of the LAC.	
	1 AO 4 Cit 15 Par 1 SSEAC 1 Stu (22)	Support maintaining current provisions related to LACs.	
	1 Sup (1)	Suggests that the requirement for LACs be dropped due to difficulties with attendance.	
Infant and Toddler Transition/ Part C to Part B (except IEP meeting notice and composition) 8 VAC 20-81-230 G. (53 comments)	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support the proposed provisions regarding transition in the IEP (specifically regarding additional notice requirements and regarding IEP content.) These changes will facilitate smoother and more effective transition efforts for Part C.	The proposed provisions are consistent with IDEA and federal regulations.
National Instructional Materials Accessibility Center (NIMAC)/ National Accessibility Materials	1 Gen Ed (1)	Supports the need to provide students with disabilities access to instructional materials in accessible formats and suggests that teachers have access to teacher’s editions and necessary supplies such as graphing calculators.	Consistent with the federal regulations, Virginia is implementing a system to assist LEAs to provide instructional materials in accessible formats in a timely manner. As the system is developed, further direction and technical assistance will be

Issue	Source	Comments	VDOE Response
Accessibility Standard (NIMAS) 8 VAC 20-81-230 K. (118 comments)	2 AO 1 LEA Gen 1 Par 1 PO 1 SLP 3 Sped Tch (9)	Suggest that school boards ensure that students with disabilities have access to instructional materials in accessible formats and that teachers also have access to teacher editions and necessary supplies and equipment associated with this item.	<p>provided to LEAs.</p> <p>Materials provided to teachers are the responsibility of the LEA. These regulations require accessible materials for students which include the services required for them to be accessible. This may necessitate materials for teachers.</p> <p>Student eligibility for NIMAS/NIMAC is the result of copyright laws and federal regulations.</p>
	6 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 28 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu (53)	Oppose the definitions used for those who are eligible for NIMAC/NIMAS services and suggests that VDOE not be in the business of medically diagnosing disabilities.	
	3 Adv 6 AO 2 Att 14 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (55)	Suggest inserting a new provision to state, "The local educational agency shall adopt a guidance document outlining the reasonable steps the local education agency will take to facilitate providing instructional materials in accessible formats in a timely manner. The adopted guidance shall also give consideration to availability of supporting assistive technology, supplemental books and materials, advance availability of teacher syllabuses, and availability of trained personnel to proof non-NIMAS documents prior to student receipt."	
State Operated Programs Educational Responsibility 8 VAC 20-81-320 (53 comments)	6 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 27 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu (52)	Oppose the proposed elimination of language that requires a comprehensive system of personnel development to include training of general and special education instructional personnel, support personnel, and paraprofessionals.	<p>The Virginia Standards of Quality have a provision for professional development which includes provisions for students with disabilities. To require that in these regulations would be redundant.</p> <p>Consistent with federal regulations, the requirement for CSPD was deleted.</p>

Issue	Source	Comments	VDOE Response
	1 MD (1)	Suggests that spending on special education needs to be monitored closely since autism spectrum disorder diagnoses is on the rise but not necessarily in true prevalence. This could impact funding targets and suggests the need to be fiscally responsible especially during a recession.	
Section 504 8 VAC 20-81-330 (53 comments)	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support implementing the Section 504 section as proposed which allows localities to use the state hearing officer system at their own expense.	Because IDEA encompasses requirements from Section 504, the hearing officers are trained in the requirements of Section 504. It is, therefore, appropriate for LEAs to use the hearing officer system to resolve disputes on Section 504 requirements.